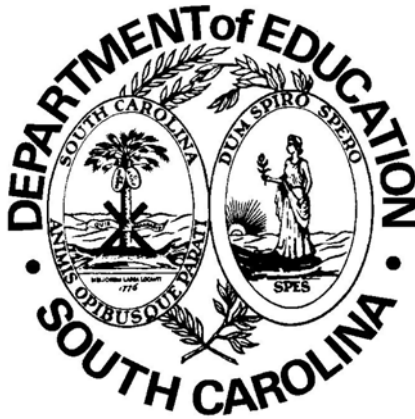


**POLICIES AND PROCEDURES
FOR PROGRAMS FOR STUDENTS WITH DISABILITIES
IN SOUTH CAROLINA**



**South Carolina Department of Education
Office of Exceptional Children**

**Inez Moore Tenenbaum
State Superintendent of Education**

2004

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Certifications

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicant should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000 as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause of default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposed by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of performance (Street address, city, county, state, zip code)

Check [] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
South Carolina Department of Education	H027A990081
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Inez M. Tenenbaum, State Superintendent of Education	
SIGNATURE	DATE

Submission Statement

I. Submission Statement for Part B of IDEA **(CFDA No. 84-027 and 84-173)**

Please check the option that the State is using for this federal fiscal year.

_____ The State has on file with the U.S. Secretary of Education policies, procedures, and assurances that meet the eligibility requirements of Part B of the Act. No changes to the previously submitted policies, procedures, and assurances are necessary. Therefore, the State is not submitting modifications to the policies and procedures on file with the Secretary.

 X The State is submitting modifications to state policies and procedures. These modifications are listed in Part III of this state application and include modifications: (1) that are necessary to ensure the State's compliance with Part B of the IDEA as amended on June 4, 1997 or the final regulations implementing Part B issued on March 12, 1999; (2) deemed necessary by the State, for example when the State revises applicable state law or regulations; (3) required by the Secretary because there is a new interpretation of the Act or regulations by a federal court of the State's highest court; and/or (4) because of an official finding or noncompliance with federal law or regulations.

I, the undersigned authorized official of the state of South Carolina, State Department of Education, have been designated by the Governor of this State to submit this application for FFY 2000 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Assurances and Certifications

The State Educational Agency hereby declares that it has filed the following assurances and certifications with the U.S. Department of Education, and, as of the date of the signature below, reaffirms, and incorporates by reference those assurances and certifications with respect to Part B of IDEA. The State certifies that no circumstances affecting the validity of these assurances have changed since their previous filing.

As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all federal laws, executive orders, and regulations.

The three certifications in ED Form 80-0013, regarding lobbying, debarment/suspension responsibility status, and drug-free workplace.

With respect to the Certification Regarding Lobbying, the State recertifies that no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the state agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all subawards at all tiers.

The certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11, relating to state eligibility, authority and approval to submit and carry out the provisions of its state application, and consistency of that application with state law.

Assurance Statement

I certify that the state of South Carolina makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411-1420):

If the State uses a funding mechanism that distributes state funds on the basis of the type of setting where a child is served and the State does not have policies and procedures to ensure that the State's funding mechanism does not violate the requirements for placing children with disabilities in the least restrictive environment at 20 U.S.C. 1412 (a)(5)(A), the State assures it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in placements that violate the requirement at 20 U.S.C. 1412(a)(5)(A). (20 U.S.C. 1412(a)(5)(B)(ii) and 34 CFR §300.130)

If the state educational agency is not responsible for ensuring that the requirements of Part B are met with respect to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, then the Governor has assigned that responsibility to another agency. The State assures that the documentation of this arrangement has been sent to the Office of Special Education Programs as part of the state plan. (20 U.S.C. 1412 (a)(11)(C))

Except as provided in section 613(a)(2)(A)(iii), (B) and (C) of the IDEA, and 34 CFR §§ 300.230–300.233, federal funds made available to states under Part B will be used to supplement the level of federal, state, and local funds (including funds that are not under the direct control of state or local educational agencies) expended for special education and related services provided to children with disabilities under this part, and in no case to supplant such federal, state, and local funds, except that where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in whole or part,

the requirement of this subparagraph if the Secretary concurs with evidence provided by the State. (20 U.S.C. 1412(a)(18)(C) and 34 CFR §300.153)

Funds paid to a state under Part B of IDEA will not be commingled with state funds. (20 U.S.C. 1412(a)(18)(B) and 34 CFR §300.152)

The State does not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating children with disabilities, below the amount of that support for the preceding fiscal year. (20 U.S.C. 1412(a)(19)(A) and 34 CFR §300.154)

Prior to the adoption of any policies and procedures needed to comply with Part B, including any amendments to policies and procedures, the State ensures that there are public hearings, adequate notice of hearings, and the opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities, consistent with the requirements of 20 U.S.C. 1412(a)(20) and 34 CFR §§300.280-300.284.

The State has established and maintains an advisory panel for the purpose of providing policy and guidance with respect to special education and related services for children with disabilities in the State, consistent with the requirements of 20 U.S.C. 1412(a)(21) and 34 CFR §§300.650-300.653.

Nothing in Part B permits a state to reduce medical and other assistance available, or to alter eligibility under titles V and XIX of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities in the State. (20 U.S.C. 1412 (e))

The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(2))

The State, local educational agencies, and educational service agencies shall use fiscal control and funding accounting procedures that insure proper disbursement of and accounting for federal funds. (34 CFR §76.702)

I certify that the state of South Carolina will operate its Part B program in accordance with the assurances required by the regulations and certifications on file, and that, as of the date of submission of this statement, none of the facts have changed upon which those certifications and assurances were made. (34 CFR §76.104)

Name of Applicant: South Carolina Department of Education	Program: Special Education—Grants to States
Printed Name and Title of Authorized Representative of the State: Inez M. Tenenbaum, State Superintendent of Education	
Signature:	Date:

Description of the Use of Funds

Description of the Use of Funds under Part B of the Individuals with Disabilities Education Act (Section 611 (f)(5))

Describe how the amount retained by the state educational agency under section 611(f)(1) will be used to meet the following activities under Part B. (See Section 611 (f)(2) and (3)) The maximum amount that a state may retain under section 611(f)(1) will be reported to the State annually by the department.

<u>FOR ADMINISTRATIVE ACTIVITIES UNDER PART B</u>	<u>PERCENTAGE OF TOTAL STATE ALLOCATIONS</u>
Including Section 619 (Including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities	(Other measures of the amounts that will be used for these purposes may be substituted.)
The administration of Part B of IDEA	5%
The administration of Part C of IDEA (if the SDE is the lead agency for the State under Part C).	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS (Other measures of the amounts that will be used for these purposes may be substituted.)
Direct and support services, including technical assistance and personnel development and training.	.77%
Administrative cost of monitoring and complaint investigation (but only to the extent that these costs exceed the costs incurred for those activities during federal fiscal year 1985).	
Establishment and implementation of the mediation process required by section 615 (e) including providing for the costs of mediators and support personnel.	
To assist LEAs in meeting personnel shortages.	.23%
To develop a State Improvement Plan under Subpart 1, of Part D of IDEA.	.06%
Activities at the state and local levels to meet the performance goals established by the State under Section 612 (a)(16).	
Activities at the state and local levels to support implementation of the State Improvement Plan under Subpart 1 of part D of IDEA (if the State receives funds under that Subpart).	
To supplement other amounts used to develop and implement a statewide coordinated service system designed to improve results for children and families, including children with disabilities and their families (not to exceed one percent of the amount received by the State under Section 611). This system must be coordinated with, and to the extent appropriate, build on the system of coordinated services developed by the State under Part C of IDEA.	1.00%
For subgrants to LEAs for capacity building and improvement.	4.48%

Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the above charts to meet state priorities.

The Office of Exceptional Children conducted a series of four regional input meetings for the coordinators of the programs for children with disabilities in local school districts. The purpose of these sessions was to determine needs that districts have relative to the provision of a free appropriate public education for the students with disabilities within their jurisdiction. Additionally, input was sought as to how the South Carolina Department of Education, Office of Exceptional Children, could assist local school districts in meeting their needs. Based upon the information gleaned from these meetings, the funding priorities were established.

What percentage, if any, of the amounts retained by the State for the above purposes will be distributed to LEAs by formula. (A State has discretion to determine any formula that it uses to distribute these retained funds to LEAs.)

One hundred percent of the funds retained for capacity building will be distributed to LEAs by formula.

In accordance with the requirements of Section 427 of the General Education Provisions Act, the SDE utilizes state-level funds for the procurement of large print and braille textbooks for students who are legally blind. This provides these students access to the general curriculum and enables them to participate as equals in the various programs of the school. Further, state-level funds are being used for two research projects designed to enhance the availability of appropriate programs for students with disabilities. One of these projects is designed to improve the referral process for students with suspected disabilities in order to improve the delivery of services to all students, while the other focuses on the feasibility of utilizing the category of developmentally delayed along with the corresponding age range in South Carolina. Both programs will improve access to special education and related services for students with disabilities.

Free Appropriate Public Education

Section 300.121

Free Appropriate Public Education

It is the policy of the state of South Carolina to provide a free and appropriate public education (FAPE) including special education and related services for all students with disabilities who are residents of the state, including students with disabilities who have been suspended or expelled from school. This applies to all public agencies within the state.

Consistent with state law, the designation “all students with disabilities of legal school age” shall include students with disabilities ages three through twenty-one. The provision of special education and related services for children with disabilities, ages three through twenty-one, shall be the responsibility of the State Department of Education (SDE) and the school districts. Additional vehicles of service delivery shall include state agencies, institutions, and other participating organizations. The SDE shall be responsible for assuring that the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) are carried out and that all educational programs for students with disabilities within the state, including all such programs administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs for students with disabilities in the SDE and shall meet education standards of the SDE.

A FAPE is accorded to all students with disabilities through school districts/agencies. To ensure the implementation of a FAPE, policies and procedures are submitted to the SDE for approval. Following review and approval, the Office of Exceptional Children monitors school districts/agencies to ensure compliance with the provisions of the IDEA. The primary delivery system of a FAPE is through the school district. State law (S.C. Code Ann. § 59-33-50) mandates that all school districts identify and provide appropriate special education programs to all students with disabilities within their jurisdiction. Enforcement of these requirements is through the Office of School Quality of the SDE and through content and approval of school district applications for entitlements under the IDEA.

A proviso contained in the General Appropriations Bill provides that the responsibility for providing a FAPE for students with disabilities is vested in the public school district wherein a student of lawful school age resides in a foster home, group home, orphanage, or a state-operated health facility, including a facility for the treatment of mental illness or chemical dependence located within the jurisdiction of the school district.

In the event that a third party places a student with a disability in a residential setting for purposes other than education, state legislation requires that the SDE approve the educational program prior to such a placement. Therefore, prior to any state agency's

placing a student with a disability in any setting, the educational program is approved in advance by the SDE.

The SDE ensures minimal standards of the agencies for the operation of public school programs, including programs for students with disabilities, through the utilization of the defined program/accreditation procedures approved by the State Board of Education.

Minimal standards for the educational programs for all students receiving a public education, including those with disabilities, are specified in the defined program/accreditation procedures. Specific portions relate to the establishment and maintenance of programs for students with disabilities in school districts. The defined program/accreditation procedures ensure a basic comparability among all school district programs regardless of funding sources. The Office of Exceptional Children serves in a consultative basis to the Office of School Quality, which has the primary responsibility in the SDE for conducting audits to ensure that the standards in the defined program/accreditation procedures are implemented.

All private schools and private residential schools serving students with disabilities placed there by a school district/agency—as well as all educational programs under the authority of a state agency—must comply with SDE standards, as well as all educational programs under the authority of a state agency.

FAPE for Children Beginning at Age Three

The obligation to make a FAPE available to each eligible child residing in the state begins no later than the child's third birthday. An individualized education program (IEP) shall be in effect no later than the child's third birthday. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

FAPE for Students Suspended or Expelled from School

A. Removals for up to ten school days in a school year:

School districts/agencies need not provide services during periods of removal to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

B. Short-term removals that do not constitute a change in placement after student has already been removed for ten school days in a school year:

In the case of a student with a disability who has been removed from his or her current placement for more than ten school days in that school year, the school

district/agency, for the remainder of the removals, shall ensure that services are provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP, if the removal is done under the school personnel's authority to remove for not more than ten consecutive school days, as long as that removal does not constitute a change of placement. A change in placement occurs when a student is removed for more than ten consecutive school days or when a child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. School personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary.

- C. Long-term removals (other than forty-five day removals) when student's behavior is not a manifestation of disability after student has already been removed for ten school days in a school year:

The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

- D. Removals for weapons and drugs:

Removals to interim alternative educational placements for up to forty-five days by school personnel are permissible for weapons or drug offenses (whether or not the offenses are a manifestation of the student's disability). The IEP team, however, must determine the extent to which services must be provided in interim alternative educational settings. Placements in such settings must

- be selected by the IEP team so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP, and
- include services and modifications to address the student's behavior relating to weapons and drugs that are designed to prevent the behavior from recurring.

- E. Removals by hearing officers for behavior that is substantially likely to result in injury to self or others:

Removals to interim alternative educational placements for up to forty-five days by a hearing officer are permissible based on a determination that maintaining the current placement of the student is substantially likely to result in injury to the student or to others if he or she remains in the current placement (whether or not the offenses are

a manifestation of the student's disability. The hearing officer must determine that the interim alternative educational setting proposed by school personnel who have consulted with the student's special education teacher

- has been selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP, and
- includes services and modifications to address the student's behavior that was substantially likely to result in injury to self or others and that are designed to prevent the behavior from recurring.

F. Any removal where parent agrees to change in placement:

The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

In accordance with state statutes, no student, including a student with a disability, may be suspended in excess of ten days for any one offense and for not more than thirty days in any one school year.

Students Advancing from Grade to Grade

A FAPE is available to any individual student with a disability who needs special education and related services, even though the student is advancing from grade to grade. The determination that a student is eligible for special education and related services shall be made on an individual basis by the group responsible within the student's school district/agency (IEP committee and other qualified professionals, as appropriate) for making those determinations.

Section 300.122 Exception to a FAPE for Certain Ages

It is not required that special education and related services under Part B of the IDEA be provided to a student with a disability who, in the last educational placement prior to his or her incarceration in an adult correctional facility, was not actually identified as being a student with a disability under Section 300.7 and did not have an IEP under Part B of the IDEA. There is no obligation to provide a FAPE to students with disabilities who have graduated from high school with a regular high school diploma. Students who have graduated but have not been awarded a regular high school diploma may still receive a FAPE. Graduation from high school with a regular diploma constitutes a change in placement requiring prior written notice in accordance with Section 300.503.

Full Educational Opportunity Goal

Section 300.123 Full Educational Opportunity Goal

It is the goal of South Carolina to provide full educational opportunities to all children with disabilities ages birth through twenty-one.

Section 300.124 Full Educational Opportunity Goal: Timetable

The goal of serving all known children with disabilities between ages five and twenty-one (ages four and twenty-one for students with hearing and vision disabilities) was achieved as of January 1978. These ages are mandated by state law and are included in the state funding formula necessary for full implementation of special education and related services. The goal of serving all known children with disabilities between the ages of three and five was achieved as of July 1991. These ages are also mandated by state law and are funded through a line item in the General Appropriations Act.

The South Carolina Department of Health and Environmental Control (DHEC) has been designated as the state's lead agency for the provision of special services to children with developmental delays and children with disabilities ages birth through two. This agency has accomplished the following subgoals for planning, developing, and implementing a comprehensive service delivery system:

- definition of the term "developmental delay";
- timetable for availability of services;
- system to ensure timely, comprehensive multidisciplinary evaluations of children and assessment of family needs;
- system for the development of individualized family service plans;
- comprehensive Child Find system;
- public awareness program;
- centralized service directory;
- system for personnel training and education;
- policy on service providers;
- financial procedures;
- system for ensuring procedural safeguards;
- personnel standards; and
- system for data collection/compilation.

Early intervention services such as various therapies, training, and health services are being implemented for children from birth through two years of age. All identified children with disabilities in this age group have had full educational opportunities since July 1994.

Child Identification

Section 300.125 Child Identification

The SDE is responsible in South Carolina for statewide coordination of the planning and implementation of child identification, location, and evaluation efforts. The following policies and procedures are in effect.

- The SDE has established statewide standards and sample procedures for the Child Find program. These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of Child Find requirements.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding Child Find.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for Child Find as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the Child Find provisions for children with disabilities served by the agencies.
- Further training or technical assistance is provided to assist school districts/agencies in correcting any areas of noncompliance.
- Follow-up monitoring is conducted, as warranted.
- The SDE requires compliance by all public agencies with regard to all provisions set forth in the IDEA.

All children with disabilities residing in the state, including children with disabilities who are attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. The requirements apply to highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of having disabilities and being in need of special education, even though they are advancing from grade to grade. South

Carolina uses MIS2000, a database shared with twenty other states that tracks migrant students and has the capacity to track students with disabilities.

The SDE disseminated Child Find brochures and pins through a statewide promotion to all school districts/agencies to assist in their Child Find efforts and to promote the statewide central directory Child Find toll-free telephone number, 1-800-922-1107.

The following agencies and associations participate in the planning and implementation of the Child Find system in the state:

- Epilepsy Foundation of South Carolina,
- South Carolina Department of Disabilities and Special Needs,
- South Carolina Commission for the Blind,
- South Carolina Department of Health and Environmental Control,
- South Carolina Department of Mental Health,
- United Cerebral Palsy,
- South Carolina Speech and Hearing Clinics,
- South Carolina School for the Deaf and the Blind,
- South Carolina Department of Vocational Rehabilitation,
- South Carolina Head Start Program,
- South Carolina Department of Education,
- PRO-Parents,
- Continuum of Care,
- South Carolina Department of Social Services,
- South Carolina Children's Foster Care Review Board System, and
- Office of the Governor, Ombudsman Program.

These agencies/associations provide data to the SDE that is used for planning of future programs for students with disabilities. The location, identification, and evaluation of children with disabilities are required of all school districts through the state statute for the education of students with disabilities. The statewide responsibility is vested in school districts. Other state agencies are service providers, and the population is identified prior to their placement in these agencies. In the event that a child thought to have a disability has been placed in another agency without having undergone identification and evaluation procedures in an agency, the agency is required to meet or exceed the evaluation requirements imposed on school districts through State Board of Education regulations.

Training on procedures regarding child identification is provided to all school districts/agencies. Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support.

The SDE monitors child identification initiatives. Each school district/agency's policies and procedures are reviewed to determine that they are in compliance with both federal and state statutes and regulations. During on-site monitoring of school districts/agencies, documentation is reviewed to substantiate that the following procedures are being implemented:

- Community-based awareness activities are being conducted annually (at least once each school year).
- Screening of preschool children is being conducted annually (at least once each school year).
- Screening of preschool children is being conducted within thirty calendar days of receipt of a referral, excluding staff holidays.
- Intradistrict school-based awareness activities are being conducted annually (at least once each school year).
- Students with disabilities attending private schools are included in the school district's Child Find activities. There is evidence that the school district has consulted with representatives of parentally placed private-school students with disabilities on how to conduct Child Find activities for that population in a manner comparable to those activities for school district children in accordance with Section 300.451.
- Highly mobile students, such as migrant and homeless students, are included in Child Find efforts.
- Students who are enrolled in adult education programs in the school district are included in Child Find activities.
- Students who are residing in group homes located within the jurisdiction of the school district are included in Child Find activities.
- Follow-up on students who fail screening components or appear to be at-risk is documented.

Each school district/agency is required to provide the following information in the policies and procedures section of the application for funds under the IDEA, as well as in annual updates:

- the number of children screened,
- the number of children evaluated, and
- the number of children placed (by category of disability).

The number of children screened, evaluated, and placed in programs for children with disabilities is reviewed during the on-site monitoring visit. Each school district/agency develops methods/procedures for determining which children are currently receiving needed special education and services and these procedures are reviewed and approved/disapproved by the Office of Exceptional Children. During the on-site monitoring visit, the implementation of these procedures is reviewed.

The collection and use of data to meet the requirements of Child Find are subject to the confidentiality requirements of Sections 300.560–300.577.

The BabyNet system, with the South Carolina Department Health and Environmental Control as the lead agency, represents the collaboration of state agencies to commit their resources to ensure the availability and accessibility of early intervention services for eligible infants and toddlers, from birth through two years of age, and their families. BabyNet—the Interagency Agreement for the Development and Implementation of a Statewide System of Services for Children with Disabilities, Birth through Two Years and Their Families—is a collaborative effort among South Carolina’s Commission for the Blind, the State Department of Education, Head Start, the Department of Health and Human Services, and the School for the Deaf and Blind. All agencies included in the agreement represent programs, resources, and services available for children eligible for BabyNet and their families. The cooperative interagency agreement also specifies the roles and responsibilities of the participating agencies relative to BabyNet. It is understood by the parties of the agreement that current efforts of state and local agencies be sustained and expanded where possible to maintain the goal of statewide availability of services.

The philosophy of the BabyNet system is that communities have the potential to design a service system that meets their unique needs. In that regard, state agencies play a critical role in assisting communities to establish a system that maximizes the provision of all available resources and works collaboratively to secure additional necessary services and resources. Knowing their community best, local planners work to secure all necessary services by exploring all possible public or private resources thereby eliminating duplication and fragmentation of services where they exist and allowing maximum choice for families.

Parties to the agreement support participation in and representation on the state Interagency Coordination Council (ICC) and official committees and task forces of the ICC by their appropriate staff. They also support local interagency initiatives in the design and development of community-based service delivery systems. This includes promoting the development of and maintenance of local children’s councils through the formation of bylaws, local procedures, local memorandums of agreement (MOA), training, support, and technical assistance.

Given the parallel requirements under federal laws, BabyNet, the SDE, and Head Start accept joint responsibility for the location, identification, screening, and evaluation of all infants and toddlers who are potentially eligible under the IDEA. The lead agency with the assistance of the state ICC ensures that the Child Find system under BabyNet is coordinated with all other major efforts to locate and identify children conducted by other

state agencies responsible for administering the various education, health, and social service programs relevant to BabyNet. Local communities determine the most effective strategies for Child Find. All activities are conducted at no cost to families.

Anyone may refer a child to BabyNet. Referrals may be made by notifying the BabyNet central office or district office, the central directory, or any participating agency. Referrals must be made no more than two working days after a child has been identified. Primary referral sources are routinely informed about the procedures, their responsibilities, and the availability of early intervention services through material and site visits. Local ICCs and BabyNet local staff routinely implement methods to determine the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services.

Notices to parents are provided in their native language to fully inform them about application requirements and procedural safeguards.

The BabyNet central directory for the state is a toll-free number that provides information about public and private early intervention services, resources, and experts available in the state; research and demonstration projects being conducted in the state; and professional and other groups that provide assistance to children eligible for BabyNet and their families. The central directory is maintained by the South Carolina Services Information System (SCSIS). SCSIS works with the SDE, local school districts, day care centers, preschool programs, at-home providers, and so forth, to assist in identifying and referring individuals between the ages of three and twenty-one who may have a disability or delay that could potentially affect their ability to be successful in the educational system. This information is available to all public agencies in the state.

The SDE and SCSIS developed a memorandum of agreement that enables the SDE to use the SCSIS toll-free and local phone numbers as the numbers for Child Find information. The goal of this endeavor was to provide parents, grandparents, caregivers, and physicians ease of access to information about services and to provide some consistency with BabyNet Child Find efforts.

Screening is the ongoing process to identify infants and toddlers who may need further diagnostic evaluation to determine eligibility for services under BabyNet. With the advice and assistance of local ICCs, screening events and activities shall be coordinated in order to prevent duplication of effort among agencies.

BabyNet and school districts implement a variety of activities for the identification of infants, toddlers, and children with disabilities who may be eligible for services under the IDEA. These services include the following:

- screening clinics conducted in conjunction with the staff of BabyNet participating agencies on the same day each month at local primary and elementary schools;
- joint planning for Child Find efforts among various agencies, including all public agencies via formal and informal agency agreements; and

- participation and representation at staffings held by BabyNet and other agencies.

Infants and toddlers who are referred to the BabyNet program but are found ineligible, or whose parents do not request services available under the IDEA, are referred to appropriate systems for care and follow-up.

Procedures for Evaluation and Determination of Eligibility

Section 300.126 Procedures for Evaluation and Determination of Eligibility

The SDE has established and implemented procedures that meet the requirements of Sections 300.531–300.536 through the following methods:

- The criteria for entry into programs of special education for students with disabilities—which are procedures to ensure the protection of children with disabilities regarding evaluation and determination of eligibility—have been developed by the SDE, approved by the State Board of Education, and published as State Board Regulation 43-243.1.
- Each school district/agency serving students with disabilities must submit policies and procedures relative to evaluation and determination of eligibility to the Office of Exceptional Children for review and approval.
- Training on procedures for evaluation and determination of eligibility is provided to all school districts/agencies.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support.
- The SDE monitors the implementation of each school district/agency's policies and procedures relative to evaluation and determination of eligibility to determine that they are in compliance with both federal and state statutes and regulations. During on-site monitoring of agencies, documentation is reviewed to substantiate that the procedures have been implemented.

Section 300.531 Initial Evaluation

Each school district/agency shall conduct a full and individual initial evaluation in accordance with Sections 300.532 and 300.533 before the initial provision of special education and related services to a child with a disability under Part B of the IDEA.

Section 300.532 Evaluation Procedures

Each school district/agency shall ensure, at a minimum, that the following requirements are met:

- Tests and other evaluation materials used to assess a child under Part B of the IDEA are selected and administered so as not to be discriminatory on a racial or

cultural basis and are provided and administered in the child's native language or other mode of communication, unless it is clearly unfeasible to do so.

- Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent and information related to enabling the child to be involved in and progress in the general curriculum for a preschool child and to participate in appropriate activities that may assist in determining whether the child is one with a disability under Section 300.7, and the content of the child's IEP.
- Any standardized tests that are given to a child have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (such as the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.
- Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- No single procedure is used as the sole criterion for determining whether a child has a disability and for determining an appropriate educational program for the child.
- The child is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- In evaluating each child with a disability under Sections 300.531–300.536, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified.
- Each school district/agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

- Each school district/agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

Section 300.533

Determination of Needed Evaluation Data

Review of Existing Evaluation Data

As part of an initial evaluation, if appropriate, and as part of any reevaluation under Part B of the IDEA, a group that includes the individuals described in Section 300.344 (the IEP team) and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related services providers;

On the basis of that review and input from the child's parents, additional data needed, if any, will be identified to determine whether the child has a particular category of disability. In the case of a reevaluation of a child, a determination will be made as to whether the child continues to have such a disability. The following will also be determined:

- what the present levels of performance and educational needs of the child are;
- whether the child needs special education and related services or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

Conduct of Review

The group described above (the IEP team and other qualified professionals, as appropriate) may conduct its review without a meeting.

Need for Additional Data

Each school district/agency shall administer tests and other evaluation materials as may be needed to produce the data identified above.

Requirements If Additional Data Are Not Needed

If the determination is made that no additional data are needed to determine whether the child continues to be one with a disability, the school district/agency shall notify the

child's parents of that determination and the reasons for it. The parents shall also be notified of their right to request an assessment to determine whether, for purposes of services under the IDEA, their child continues to be a child with a disability. The school district/agency is not required to conduct the assessment unless requested to do so by the child's parents.

Section 300.534 Determination of Eligibility

Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child has a disability as defined in Section 300.7. The school district/agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

A child may not be determined to be eligible for special education and related services if the determinant factor for that eligibility is a lack of instruction in reading or math or a limited English proficiency, and the child does not otherwise meet the eligibility criteria under Section 300.7(a).

Each school district/agency must evaluate a child with a disability in accordance with Sections 300.532 and 300.533 before determining that the child can no longer be considered to have a disability. This evaluation is not required before the termination of a student's eligibility under Part B of the IDEA due to graduation with a regular high school diploma or exceeding the age of eligibility for a FAPE under state law.

Seven school districts are participating in a pilot study of the feasibility of establishing significant developmental delay as a categorical option for special education and related services for students ages six through eight. The results of this two-year research project will determine the ages that the state will use in this category.

Section 300.535 Procedures for Determining Eligibility and Placement

In interpreting evaluation data for the purpose of determining if a child is one with a disability under Section 300.7 and the educational needs of the child, each school district/agency shall draw on information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The information obtained from all of these sources shall be documented and carefully considered.

If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for him or her in accordance with Sections 300.340–300.350 and state requirements.

Section 300.536**Reevaluation**

Each school district/agency shall ensure that the IEP of each child with a disability is reviewed in accordance with Sections 300.340–300.350 and state requirements. A reevaluation of each child, in accordance with Sections 300.532–300.535, shall be conducted if conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation. In any event, a review shall be conducted at least once every three years.

Confidentiality of Personally Identifiable Information

Section 300.127 Confidentiality of Personally Identifiable Information

The SDE has procedures to ensure the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA, including the following:

- The SDE has established statewide standards and sample procedures for confidentiality. These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of confidentiality requirements.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided on request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding confidentiality.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for confidentiality as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the confidentiality provisions for children with disabilities served by the agencies.
- Further training or technical assistance is provided to assist agencies in correcting any areas of noncompliance.
- Follow-up monitoring is conducted as warranted.
- Federal funds under the IDEA are withheld to any public agency not in compliance with federal and state regulations under confidentiality as determined by the school district/agency's application under the IDEA, by monitoring, or through complaints received from constituents.

Section 300.561 Notice to Parents

The SDE shall give notice that is adequate to fully inform parents about the requirements of Section 300.127, including

- a description of the extent to which the notice is given in the native languages of the various population groups in the state;
- a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;
- a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in Part 99 of Title 34 of the Code of Federal Regulations.

Newspaper Announcements

The SDE will provide notice through announcements in all major newspapers having statewide coverage prior to any major identification, location, or evaluation activity. All public announcements will be presented in English, as the population of the state is relatively homogeneous with regard to native language, unless it is clearly unfeasible to do so. Announcements containing information similar to the following will appear in newspapers throughout the state:

The South Carolina Department of Education is coordinating the collection of selected information on children ages birth through twenty-one years of age with mental disabilities, emotional disabilities, learning disabilities, hearing impairments, speech impairments, visual impairments, orthopedic impairments, other health impairments, autism, traumatic brain injury, or multiple disabilities, and children with deaf-blindness. The purpose of this collection is (1) to identify all students with disabilities, ages birth through twenty-one, who are not presently receiving educational services by any agency, (2) to determine present and future program and placement needs, and (3) to develop statistical reports. Information will be sought from the school districts, the Department of Mental Health, the Department of Disabilities and Special Needs, the Department of Health and Environmental Control, the Department of Vocational Rehabilitation, the Commission for the Blind, Head Start offices, the South Carolina School for the Deaf and the Blind, the Department of Juvenile Justice, the Department of Corrections, the Department of Health and Human Services, and the John de La Howe School.

The collection of information on students with disabilities by the State Department of Education is provided directly from school districts and other educational programs for students with disabilities and is protected under the policies set forth in this section. Only designated individuals in the State Department of Education, school districts, and other participating local and state agencies/organizations will maintain information that could identify an individual

child. Information items to be collected include professional diagnostic information, services needed and provided, and the state and local cost for selected programs.

Parents and guardians shall have the right to inspect and obtain copies of any and all information that is subject to collection and to appeal the accuracy of any such information. The access of unauthorized persons to personally identifiable information without parental consent is forbidden. Interested parties may contact the appropriate agency/organization to determine the location of personally identifiable information. One person in each school district and participating agency/organization has responsibility for having access to the information. If the parents so request, it is required that personally identifiable information be destroyed following the termination of services to the student. Parents will be notified prior to the collection and destruction of personally identifiable information. Parents have the right to have a representative inspect and review records pertaining to their child, provided the parents give written authorization of such to the public agency. Parents are also entitled to receive explanations, or interpretations of information pertaining to their children. Upon specific request, parents will receive a list of names of persons to whom personally identifiable information has been released, the type of information released, and the purpose for which it was released. Copies of a school district/agency's printed policies and procedures developed to ensure confidentiality will be given to parents upon request. For further information regarding the survey or regarding the person to contact for additional information, you may contact the Office of Exceptional Children, State Department of Education, 1429 Senate Street, Rutledge Building, Columbia, South Carolina 29201.

Notice to Parents

Copies of the following notice will be provided to each school district and participating agency. These notices will be of sufficient quantity to ensure that they may be seen and/or otherwise made public to the parents of students on whom information may be collected.

The [*name of agency or organization*] is engaged in collecting selected information on students with disabilities, birth through twenty-one years of age, in the areas of mental disabilities, emotional disabilities, learning disabilities, hearing impairments, speech impairments, visual impairments, orthopedic impairments, other health impairments, autism, traumatic brain injury, or multiple disabilities, and children with deaf-blindness. The purpose of this collection is to determine present and future program needs and to develop statistical reports. Participating agencies/organizations include the South Carolina Department of Education, local school districts, the South Carolina Department of Mental Health, the South Carolina Department of Disabilities and Special Needs, the South Carolina Department of Vocational Rehabilitation, the South Carolina Commission for the Blind, United Cerebral Palsy, Head Start offices, the South Carolina School for the Deaf and the Blind, the South Carolina Department of

Juvenile Justice, the South Carolina Department of Corrections, the Department of Health and Human Services, and the John de La Howe School. [Other agencies may be added to this listing where appropriate.] Information that could identify an individual student will not be released to unauthorized persons. As a parent, you are guaranteed the right to inspect any such information that is subject to collection and to challenge the accuracy of the information. Access by an unauthorized person to information that would identify an individual student, without informed consent of the parent, is expressly forbidden.

This agency/organization maintains the responsibility for the confidential maintenance and storage of this information and for the destruction of this information following the termination of services for that student. Parents will be notified prior to the destruction of the information.

Section 300.562 Access Rights

Parents are guaranteed full and free access to information that is collected and maintained regarding their children by the SDE, school districts, and other participating agencies/organizations:

- Parents/surrogates shall have the right to inspect and review any education records relating to their children that are collected, maintained, or used by the school district/agency.
- Parents/surrogates shall have the right to receive a response from the school district/agency to reasonable requests for explanations or interpretations of information pertaining to their children. The school district/agency shall comply with such a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case more than forty-five days after the request is made.
- Parents/surrogates shall have the right to request that the school district/agency provide copies of the records containing the information if failure to provide those copies would effectively prevent him or her from exercising the parental right to inspect and review the records.
- Parents/surrogates shall have the right to have a representative inspect and review records pertaining to their child, subject to their providing written authorization of such to the school district/agency. (The provision of copies of records to representatives of parents is not mandatory unless failure to provide those copies would effectively prevent the parent from exercising his or right to inspect and review the records.)
- A school district/agency may presume that the parent has authority to inspect and review records relating to his or her child unless the school district/agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, or divorce.

Section 300.563 Record of Access

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Section 300.564 Records on More Than One Child

Parents shall have the right to inspect and review only the information relating to their child; they shall be informed only of that specific information if any education record includes information on more than one student.

Section 300.565 List of Types and Locations of Information

Parents shall have the right to receive, upon specific request, a list of the types and locations of education records collected, maintained, or used by the school district/agency.

Section 300.566 Fees

The SDE, school district, or other participating agencies/organizations may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those copies. A school district/agency may not charge a fee to search for or to retrieve the requested information.

Section 300.567 Amendment of Records at Parent's Request

Parents have the right to request appropriate amendments to information in educational records collected, maintained, or used that they believe is inaccurate or misleading or violates the privacy or other rights. Procedures established in school districts/agencies to ensure parents' right to challenge the accuracy of information that the parents feel is inaccurate or misleading or violates the privacy or other rights of a child include the following:

- Parents shall submit a written or otherwise formal request for appropriate amendments to information to the district superintendent or his or her designee.
- The school district/agency shall notify the parents within fifteen calendar days of the disposition of the request. When the parents' request is accepted, the appropriate

amendments shall be made. When the request is denied, parents shall be informed of their right to request a hearing.

Section 300.568 Opportunity for a Hearing

Parents shall submit a written or otherwise formal request for a hearing to the district superintendent or his or her designee to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. The impartial due process hearing officers procured by the school district/agency to serve as impartial hearing officers for due process hearings conducted at the local level shall be used. Only persons trained by the SDE will conduct hearings for the school district/agency. Persons who were formerly employed by the school district/agency will not be considered eligible. The qualifications for impartial due process hearing officers are included under the section entitled "Impartial Hearing Officer" in the "Procedural Safeguards" chapter in this document.

Section 300.569 Result of Hearing

When the decision of the hearing officer is that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the appropriate amendments shall be made and the school district/agency will inform the parent in writing.

When the decision of the hearing officer is that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district/agency shall inform the parents of their right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

The statement/explanation shall be placed in the records of the child and be maintained as long as the record or contested portion is maintained by the school district/agency. Disclosure of the contested portion of the records to authorized persons shall also include a copy of the parents' statement/explanation.

Section 300.570 Hearing Procedures

The following procedures are in compliance with the procedures under 34 C.F.R. § 99.22 and are required for the SDE and school districts/agencies:

- The school district/agency shall submit the parents' request and all previous correspondence to an impartial hearing officer within ten calendar days of the receipt of a request for a hearing.

- Within five calendar days after receipt of a request for a hearing, the hearing officer shall notify all parties of the date, time, and location of the hearing.
- An impartial hearing officer will conduct the hearing.
- Parents have the right during the hearing to present evidence relevant to the issues. The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including legal counsel.
- Within five calendar days after the hearing, the hearing officer shall notify all parties in writing of the decision based on the evidence and testimony presented.
- The decision must be based solely on the evidence presented at the hearing.
- The notification by the hearing officer shall include a summary of the evidence and the reasons for the decision.

Section 300.571 Consent

The SDE or school district/agency may not release information from educational records to participating agencies without parental consent unless authorized to do so under Part 99 of Title 34 of the Code of Federal Regulations. Parental consent must be obtained prior to the disclosure of information to anyone other than officials of participating agencies and the use of information for purposes other than those designated. In the event that parental permission cannot be obtained, the school district/agency may invoke hearing procedures as specified prior to disclosure or use of information in other participating agencies/organizations.

State and Local Access to Information

Personally identifiable information may be disclosed (transmitted) between the SDE and school districts without written consent of the parents or the majority-age student, provided the purpose of the action is related to legitimate educational interests. Legitimate educational interests may include, but are not necessarily limited to, the following:

- identification or evaluation of students with suspected disabilities,
- referral or placement of children with disabilities, or
- other aspects related to the provision of a FAPE.

Information Disclosed between School Districts

Personally identifiable information may be disclosed (transmitted) between school districts without the written consent of the parents when the student transfers from one

school system to another. The school district transferring records shall notify the parents at their last known address, except when the transfer is initiated by parents or when the school district includes a provision in its policies or procedures that educational records are forwarded upon request of the school in which the student seeks to enroll.

Information Disclosed between School Districts and Participating Agencies

Parental permission must be obtained prior to the disclosure (transmission) of personally identifiable information regarding a student between a school district and a participating agency, except in emergency situations as outlined in 41 C.F.R. § 99.36.

Information Disclosed between SDE and Other Participating Agencies

Personally identifiable information may be disclosed (transmitted) from other participating agencies to the SDE without the written consent of parents. Personally identifiable information may be disclosed (transmitted) from the SDE to other participating agencies consistent with the conditions set forth in 41 C.F.R. § 99.35.

Section 300.572 Safeguards

The SDE and school districts/agencies shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the SDE and school districts/agencies shall be designated as the responsible person for ensuring the confidentiality of personally identifiable information. Training or instruction regarding state policies and procedures shall be provided to persons collecting or using personally identifiable information. The SDE and each school district/agency shall maintain a list of names and positions of those employees having access to personally identifiable information for public inspection.

Section 300.573 Destruction of Information

A school district/agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child and apprise them of their right to have this information destroyed. Personally identifiable information maintained on children with disabilities may be retained permanently unless the parents request that it be destroyed. Personally identifiable information no longer needed must be destroyed at the request of parents except that the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Forty-five calendar days prior to destruction of any personally identifiable information, the parents shall be notified that they have the right to request and be provided a copy of the information that has been obtained or used for the specified purposes.

Section 300.574**Children's Rights**

All rights relative to educational records shall be transferred to the student upon his or her reaching eighteen, which is the age of majority in South Carolina. Upon a student's reaching the age of majority, the school district/agency will designate a person to explain to the student orally the rights under confidentiality at the IEP team meeting before the student turns eighteen. The school district/agency shall provide notice to the parents and the student regarding the transfer of rights. The school district/agency shall provide any notice required under the IDEA to both the parent and the student. All rights of parents under the IDEA transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

If the student has been determined to be incompetent, in accordance with state laws, or if the parent obtains a power of attorney, or if the student signs a waiver provided by the school district/agency stating that the parent will continue to be accorded all rights under the IDEA, the rights will not be transferred. The student may, however, revoke the power of attorney or the waiver at any time.

In those instances in which a child who is legally determined to be incompetent to make such decisions for himself or herself and who requires legal guardianship beyond his or her reaching the age of majority, the legal guardian shall maintain the rights to privacy. If, however, the rights accorded to parents under the IDEA are transferred to a student who reaches the age of majority, the rights regarding educational records shall also be transferred to the student. The school district/agency shall provide all required notices required under the IDEA to the student and the parents.

It shall not be the prerogative of a student aged eighteen or older to deny his or her parents access to the student records, if such student is dependent on the parents as defined in Section 152 of the Internal Revenue Code of 1954 (over half of his or her financial support during the calendar year is furnished by the parents).

Section 300.575**Enforcement**

Ongoing enforcement activities shall consist of the IDEA school district/agency application approval, compliance monitoring, and an investigation of alleged violations directed to the SDE by way of the complaint system. A statement of compliance with policies of the SDE, which has been approved by the SDE, shall become a condition of future contractual relationships between the SDE and the participating agencies/organizations. Such policies shall pertain to vendored services/programs subcontracted by participating agencies/organizations.

The SDE has established sample procedures for confidentiality. These procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of confidentiality requirements.

Each school district/agency must submit an application to the SDE that specifies procedures for meeting the requirements of confidentiality. Approval of these procedures is required as a condition for receiving funds under the IDEA administered by the SDE.

The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of confidentiality provisions for children with disabilities served by the school districts/agencies. The SDE conducts compliance monitoring to determine proper implementation of the school district/agency's procedures regarding confidentiality as required by federal and state regulations. Federal funds under the IDEA are withheld from any school district/agency not in compliance with federal and state regulations under confidentiality as determined by the school district/agency's application under the IDEA, by monitoring, or through complaints received from constituents.

Section 300.576 Disciplinary Information

School districts/agencies shall follow the procedures established by each school district/agency regarding the inclusion in the records of a statement of any current or previous disciplinary action that has been taken against the student with a disability. This may only be transmitted to other school districts/agencies to the same extent that it is transmitted for students without disabilities. If such a statement is transmitted, in accordance with the procedures of a school district/agency, the statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student. If the disciplinary records are transmitted, the transmission of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against him or her.

Individualized Education Programs

Section 300.128

Individualized Education Programs

Information is provided to ensure that each school district/agency in the state will maintain records of the individualized education program (IEP) for each child with a disability and that these IEPs shall be established, reviewed, and revised as provided in Sections 300.340–300.350.

The following information is attached to indicate the regulation of IEPs in development, implementation, review, and revisions:

- State Board Regulation 43-243.1 (“Criteria for Entry into Programs of Special Education for Students with Disabilities”);
- IEP standards and procedures; and
- IEP monitoring standards.

The following are the procedures followed by the SDE in monitoring and evaluating these programs:

- The SDE has established statewide standards and sample procedures for IEPs. These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of IEP requirements.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding IEPs.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for IEPs as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the IEP provisions for children with disabilities served by the school districts/agencies.
- Further training or technical assistance is provided to assist school districts/agencies in correcting any areas of noncompliance.

- Follow-up monitoring is conducted as needed.
- Federal funds under the IDEA are withheld to any school district/agency not in compliance with federal and state regulations under IEPs as determined by the school district/agency's application under the IDEA, by monitoring, or through complaints received from constituents.

Section 300.341 Responsibility of SEA (State Education Agency) and Other Public Agencies for IEPs

The SDE ensures that each school district/agency—including school districts and other state agencies that provide special education and related services either directly, by contract, or through other arrangements—develops and implements an IEP for each of its children with disabilities through the procedures described above. The SDE also ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the school district/agency.

Section 300.342 When IEPs Must Be in Effect

For students currently receiving special education/related services, the IEP shall be in effect by the beginning of each school year. For students initially entering programs of special education/related services, the IEP planning conference must be completed within thirty calendar days of the formal evaluation and subsequent determination of student's eligibility for special education/related services.

Implementation of IEPs

The IEP shall be finalized before placement and be in effect before special education and related services are provided. The IEP shall be implemented as soon as possible following the IEP meeting. The child's IEP is accessible to each general education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. Each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

IEP or IFSP (Individualized Family Service Plan) for Children Ages Three through Five

All children with disabilities ages three through five shall have an IEP that is developed and revised consistent with the requirements in this section.

Effective Date for New Requirements

All IEPs developed, reviewed, or revised after July 1, 1998, shall meet the requirements of Sections 300.340–300.350.

Section 300.343 IEP Meetings

All IEPs must be in effect before special education and related services are provided. The term “must be in effect” means that the IEP has been developed properly (i.e., at a meeting or meetings involving all of the required participants under federal and state regulations); is regarded by both the parents and agency as appropriate in terms of the student's needs, the specified goals and objectives, and the services to be provided; and will be implemented as written. Each school district/agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEPs for students with disabilities.

Initial IEPs, Provision of Services

The child must be evaluated within forty-five calendar days following the school district/agency's receipt of parent consent to an initial evaluation of that child. If the child is determined to be eligible under this section, special education and related services are made available to him or her in accordance with an IEP. The IEP planning conference for a child who will be initially entering a program for students with disabilities must be completed within thirty calendar days of the formal evaluation and the subsequent determination that the child needs special education/related services.

Review and Revision of IEPs

Each school district/agency shall initiate and conduct meetings periodically to review each child's IEP and, if appropriate, to revise its provisions. A meeting must be held for this purpose at least once a year to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate to address

- any lack of expected progress toward the annual goals described in Section 300.347(a) and in the general curriculum if appropriate,
- the results of any reevaluation conducted under Section 300.536,
- information about the child provided to or by the parents as described in Section 300.533(a)(1),
- the child's anticipated needs, and
- any other appropriate matter.

Section 300.344**IEP Team**

Each school district/agency shall ensure that the IEP team for each child with a disability includes the following participants:

- A representative of the school district/agency (who also may be acting in another role as a member of the IEP team) who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities and is knowledgeable about the general curriculum and about the availability of resources of the school district/agency, and who is one of the following:
 - ▶ a district representative/designee who meets state certification requirements for school administrators, supervisors, or special education instructional personnel;
 - ▶ a principal;
 - ▶ a special education consultant;
 - ▶ a school psychologist;
 - ▶ a guidance counselor; or
 - ▶ a speech-language therapist and/or supervisor (for meetings to develop an IEP for “speech-language disabled only” students).
- At least one general education teacher of the child with a disability, if that child is, or may be, participating in the general education environment. As a member of the IEP team for a child with a disability, the general education teacher must, to the extent appropriate, participate in the development, review, and revision of the child’s IEP, including assisting in the determination of suitable positive behavioral interventions and strategies for the child and in the determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child consistent with Section 300.347(a)(3).
- At least one special education teacher or, where appropriate, at least one special education provider of such child. The speech-language therapist is considered to be a child’s teacher and must be in attendance during meetings to develop IEPs for any student who has only a speech-language disability. The speech-language therapist may not serve as both the school district/agency representative and the teacher during the same meeting.
- The parents of the child with a disability. One or both of the child’s parents, legal guardians, or surrogate parents must be invited to participate in the meeting.

- Whenever appropriate, the child who is the subject of the meeting. The student must be invited to attend the meeting when the parents determine it is appropriate or when transition needs or services are to be discussed.
- At the discretion of the parent or the school district/agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the parents or the school district/agency who invited the individual to be a member of the IEP team.
- An individual who can interpret the instructional implications of evaluation results, who may also be acting in another role as a member of the team described above. For a student who is being placed for the first time—other than for a category of disability not requiring an evaluation by a school psychologist—a school psychologist/educational evaluator, a licensed school psychologist, or a licensed psycho-educational specialist must participate in the meeting. For a student who is being placed for the first time for a category of disability not requiring an evaluation by a school psychologist, a person knowledgeable about the student's disability must participate in the meeting. For a student whose category of disability requires an evaluation by a school psychologist, a person who is either a school psychologist/educational evaluator, a licensed school psychologist, or a licensed psycho-educational specialist either must be present at the meeting when it appears that a decision may be made during the staffing/annual review of an IEP to change the eligibility or disabling condition of a student enrolled in special education or must provide a written report and/or statement, as appropriate, for presentation to the IEP team by the individual designated to interpret the instructional implications of evaluation results. For a student whose category of disability does not require an evaluation by a school psychologist (speech-language, hearing, vision, deaf/blind, orthopedically disabled, or other health impaired, unless a concomitant disability is present), a person knowledgeable about the student's disability must either be present when it appears a decision may be made during the staffing/annual review of an IEP to change the eligibility or disabling condition of a student enrolled in special education or must provide a written report and/or statement, as appropriate, for presentation to the IEP team by the individual designated to interpret the instructional implications of evaluation results. For a student who is speech disabled only, a speech-language therapist must be present.
- Transition services participants. If a purpose of the meeting is the consideration of transition services for a student, the school district/agency shall invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend the meeting, the school district/agency shall take other steps to ensure that his or her preferences and interests are considered. If an agency that was invited to send a representative to a meeting does not do so, the school district/agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

- The Director of Career and Technical Education and/or the appropriate career and technical education representative must be invited to attend the IEP meeting for a student who is fifteen years of age or who is in the ninth grade, whichever occurs first. This requirement applies for grades nine through twelve, unless career and technical education is determined to be inappropriate during the meeting at the ninth-grade level. On a child-by-child basis, written documentation must be maintained that representatives of career and technical education have been invited to participate it is when appropriate that they do so.

Section 300.345 Parent Participation

The student's parents will be in attendance at each IEP meeting or will be afforded the opportunity to participate. The term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with the school district/agency's procedures. The term does not include the state if the child is a ward of the state. The term "parent" includes persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

At least seven calendar days prior to the meeting, the school district/agency will ensure that a letter is provided to the parents in the primary language of their home and a copy maintained in the student's folder, which will include the following rights/information:

- The specific purpose of the IEP meeting.
- The time (hour), date, and specific location (school or building) of the IEP meeting.
- The names and the specific positions of participants who will be in attendance at the IEP meeting.
- A statement of the parents' right to reschedule the meeting at a mutually agreeable time, date, and/or location.
- A statement of the parents' right to determine whether their child is to be a participant during the scheduled meeting.
- A statement that their child will be invited to be a participant in the meeting if transition needs and/or services are to be discussed.
- A statement of the parents' right to bring other participants who have knowledge or special expertise regarding the child to the meeting.
- A statement of the parents' right to participate as equal members of the student multidisciplinary team.
- A statement of the parents' right to request a new IEP meeting any time they feel that such is warranted.

- A statement that the parents will be provided a copy of their child's IEP.
- A statement of the parents' right to be provided with an interpreter when there is a communication barrier.
- A statement that (a) if the student is fourteen years of age or older, or will turn age fourteen during the effective dates of the IEP, the IEP team will discuss transition service needs, focusing on his or her courses of study, or (b) if the student is sixteen years of age or older, or will turn sixteen during the effective dates of the IEP, the IEP team will discuss transition services and incorporate a transition services plan into the IEP. Transition services for younger students may also be discussed if the IEP team or the parents deem these services appropriate.
- If transition services are to be discussed, the specific agencies that are likely to be responsible for providing or paying for transition services and that will be invited to send representatives to the meeting will be identified.

If neither parent can attend, the school district/agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

Conducting an IEP Meeting without a Parent in Attendance

A meeting may be conducted without a parent in attendance if the school district/agency is unable to convince the parents that they should attend. In this case, the school district/agency must have a record of its attempts to arrange a mutually agreed-upon time and place, such as

- detailed records of telephone calls made or attempted and the results of those calls,
- copies of any correspondence sent to the parents and any responses received, and
- detailed records of visits made to the parents' home or place(s) of employment and the results of those visits.

An IEP meeting will be conducted without a parent in attendance only when the parents cannot be convinced that they should attend following a minimum of two attempts to arrange a mutually convenient meeting. If these attempts to gain the parents' participation are not successful, the meeting will be conducted as scheduled.

When the parents are not in attendance, within ten calendar days following the meeting a copy of the IEP/LRE (least restrictive environment) forms will be delivered to the parents. The completed IEP/LRE forms constitute the provision to parents of the required notice under 34 C.F.R. § 300.503. Documentation will be included in the students' folders to verify that the parents received the IEP/LRE forms.

When the parents are in attendance at the IEP meeting, oral explanations will be provided and questions asked of the parents to ensure they understand the proceedings.

In the event of an unexpected visit to the school or the school district/agency office by the parents of a student with a disability who has been scheduled for an annual review, or if the parents unexpectedly request a review of their child's IEP, and the required participants are available to conduct the IEP meeting at that time, the parents must receive a copy of the letter of invitation to the IEP meeting and sign a waiver of the notification period in a statement in the IEP letter. A copy of this letter will be maintained in the student's file.

The district representative/designee will review the report of the psychological evaluation and social history to determine if there is a potential communication barrier. A statement will be included in the letter of notification of the parents' right to be provided with an interpreter when there is a communication problem. Parents may be asked to notify the district representative/designee at least five calendar days prior to the meeting if an interpreter is needed. Arrangements will be made for an interpreter for parents who are deaf or whose native language is other than English.

Section 300.346 Development, Review, and Revision of IEP

In developing each child's IEP, the team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and as appropriate, the results of the child's performance on any general statewide or districtwide assessments.

The IEP team shall document the consideration of the following special factors. If in considering the following factors, the team determines that a student needs a particular device or service including an intervention, accommodation, or other program modification in order for the student to receive a FAPE, the team must include a statement to that effect in the student's IEP.

- In the case of a student whose behavior impedes his or her learning or that of others, the team shall consider, if appropriate, approaches including positive behavioral interventions, strategies, and supports to address that behavior.
- In the case of a student with limited English proficiency, the team shall consider the language needs of the student as such needs relate to his or her IEP.
- In the case of a student who is blind or visually impaired, the team shall provide for instruction in braille and the use of braille unless the team determines—after an evaluation of the student's reading and writing skills, his or her needs with regard to the appropriate reading and writing media, including an evaluation of the student's future need for instruction in braille or the use of braille—that instruction in braille or the use of braille is not appropriate for the student. In accordance with S.C. Code Ann. § 59-34-40, instruction in braille reading and writing must be sufficient to enable

each legally blind student to communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level. The student's IEP must specify

- ▶ the results obtained from the assessment required pursuant to Section 59-34-30,
- ▶ how braille will be implemented as the primary mode for learning through integration with other classroom activities,
- ▶ the date on which braille instruction will commence,
- ▶ the length of the period of instruction and the frequency and duration of each instructional session, and
- ▶ the level of competency in braille reading and writing to be achieved by the end of the period and the objective assessment measures to be used.

If a decision has been made pursuant to the assessment that braille instruction or use is not required for the student, then a specification of the evidence used to determine that the absence of braille instruction or use will not impair the student's ability to read and write effectively must be included.

- The team shall consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, shall consider the student's language and communication needs, opportunities for the student to have direct communications with peers and professional personnel in his or her communication mode, the student's academic level, and the student's full range of needs, including opportunities for direct instruction in the his or her language and communication mode.
- The team shall consider whether the student requires assistive technology devices and services.
- In conducting a meeting to review and if appropriate revise a child's IEP, the team shall consider the factors described above.

The IEP team is not required to include information under one component of a child's IEP that is already contained under another component.

Section 300.347 Content of IEP

The IEP for each child with a disability must include the following components:

- A statement as to the day and year that the IEP will be initiated (beginning date for the IEP services and modifications). Appropriately completed IEPs shall be implemented within seven calendar days following the IEP meeting for students initially entering a program of special education or for students whose placement has

been changed, except when the meetings occur immediately prior to or during the summer or other vacation periods.

- A statement as to the month, day, and year that the IEP is anticipated to be completed.
- A statement as to the anticipated date of the IEP annual review meeting (month, day, and year).
- A statement as to the anticipated frequency, location, and duration of the services and modifications included in the IEP.
- A statement as to the present levels of educational performance, accurately describing the effect of the student's performance in any area of education that is affected, including (1) academic areas (e.g., reading, math, communication, including speech-language) and (2) nonacademic areas (e.g., daily life activities, mobility). The statement utilizes assessment information obtained within the last calendar year. Methods of assessment and assessment results that can be interpreted by all participants will be included. When tests are used, these scores should reflect the impact of the relationship between the present levels of education performance and the other components of the IEP. A statement will be included regarding how the student's disability affects his or her involvement and progress in the general curriculum or, for a preschool child as appropriate, regarding how the disability affects his or her participation in appropriate activities.
- A statement describing measurable annual goals. Recommendations regarding annual goals may be prepared prior to the meeting. It will be made clear to the parents and other participants that these statements of goals have been prepared for discussion purposes only and may be revised during the meeting. These statements will describe what a student with a disability can reasonably be expected to accomplish within one calendar year of his or her participation in the special education/related service program.
- A statement of the short-term objectives that relate to meeting the student's needs resulting from his or her disability will be developed for each annual goal to enable the student to be involved in and progress in the general curriculum and to meet each of the educational needs that result from his or her disability. Recommendations regarding short-term objectives will be prepared prior to the meeting. It will be made clear to the parents and other participants that these statements have been prepared for discussion purposes only and may be revised during the meeting. A minimum of two short-term objectives—which are measurable, intermediate steps between a disabled student's present levels of educational performance and the annual goals established for the student—will be developed for each annual goal. The objectives will be based on a logical breakdown of the major components of the annual goals and will serve as milestones for measuring progress toward meeting the goals. The purpose of a short-term objective is to enable a student's teacher(s), parents, and others involved in developing and implementing the student's IEP, to gauge at intermediate times during the year how well the

student is progressing toward achievement of the annual goal. Short-term objectives will not be revised without another IEP meeting's being conducted.

- A statement explaining (a) the methods by which the student's progress toward the annual goals will be measured and (b) the fact that the child's parents will be regularly informed—at least as often as the parents of nondisabled children are informed—regarding their child's progress toward the annual goals and the extent to which that progress is sufficient to enable their child to achieve the goals by the end of the year.
- A statement explaining the method(s) used for measuring whether each short-term objective has been achieved.
- A statement as to the criteria for determining the child's mastery of each objective. Evaluation criteria will reflect the degree to which each objective is expected to be attained (e.g., 95 percent accuracy, nine out of ten times).
- A statement as to the type of physical education (PE) to be provided, such as regular PE for nondisabled students, modified/adapted PE for nondisabled students, specially designed PE, and PE in separate facilities. In the event the student has completed the requirements for PE or is medically exempt from PE, the IEP team will reflect this in the designated space in the IEP. If the student requires minor modifications to be able to participate in the regular PE program, the modifications will be described in the IEP. In cases where the student requires specially designed PE or PE in separate facilities, the program will be addressed in all applicable areas of the IEP, including present levels of performance, annual goals, short-term objectives, and a description of the services to be provided.
- A statement explaining the type of career and technical education to be provided to the particular student, such as general career and technical education for nondisabled students, modified/adapted career and technical education for nondisabled students, or specially designed career and technical education. Equal access to the full range of career and technical programs will be provided to students with disabilities in the LRE. Career and technical education programs and activities will be included, whenever appropriate, as a component of the IEP and will be planned through coordination with representatives of career and technical education and special education. Career and technical education will always be addressed in the IEP, even if "NA" is appropriate, for those students who are fifteen years of age or in the ninth grade, whichever occurs first. If the student requires minor modifications to be able to participate in the general career and technical education program, the modifications shall be described in the IEP. In cases where the student requires specially designed career and technical education, the program shall be addressed in all applicable areas of the IEP, including present levels of performance, annual goals, short-term objectives, and a description of the services to be provided.
- A statement regarding the transition-service needs, under the applicable components of the student's IEP, that focuses on the course of study (such as

participation in advanced-placement courses or in a career and technical educational program) for each student with a disability who has reached the age of fourteen or who will reach fourteen during the implementation period of the IEP—or for younger students, if it is determined appropriate by the IEP team. This statement must be updated annually. A statement of the needed transition services will be included for each student who has reached the age of sixteen or will reach sixteen during the implementation period of the IEP—or for younger students, if it is determined appropriate by the IEP team. This statement must be updated annually. The IEP team will discuss the student's preferences and interests related to postschool activities. Transition services shall be developed and incorporated into the IEP to address the student's transition from school to adult activities. This coordinated set of activities shall be based on the individual student's preferences and interests and shall include instruction, related services, community experiences, and the development of employment and other postschool adult-living objectives. When appropriate, acquisition of daily living skills and functional career and technical evaluation also will be addressed. All transition services, which will be provided at no cost to the student or his or her parents, shall address the following components:

- ▶ the student's preferences and interests;
 - ▶ employment or other postschool living outcome objectives, with a description of what the student will be doing after leaving secondary education;
 - ▶ instructional objectives that are linked to the projected postschool outcome goals;
 - ▶ community-based experiences, with a description of how the community is to be used to help reach the postschool outcomes; and
 - ▶ a description of other agency services (or any needed linkages), listing responsibilities, timelines, and appropriate evaluation criteria.
- Beginning at least one year before the student reaches the age of eighteen, a statement that the student has been informed of the rights that will transfer to him or her on reaching the age of majority. Also included in the IEP shall be a statement explaining that the parents have been informed that the rights will be transferred to the student (unless the student has been determined to be incompetent in a probate court) but that the parents will continue to receive required parent notices.
 - The determination of eligibility for extended school year (ESY) will be made during the IEP meeting. The need for ESY program/services will be addressed on all students' IEPs and will be made available, as appropriate, to meet the individual needs of all students with disabilities. ESY services must be provided only if a student's IEP team determines on an individual basis that the services are necessary for the provision of a FAPE to the student. The school district/agency shall not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. The term "ESY services" refers to special education and related services (1) that are provided to a student with a disability beyond the normal school year of the school district/agency in accordance with the student's IEP, (2) that are at no cost to the parent of the child, and (3) that

meet the standards of the SDE. The IEP team will review the school district/agency's ESY eligibility form, as well as appropriate data related to progress toward identified critical goals and objectives that may include, but not be limited to, the following:

- ▶ current and previous IEPs,
 - ▶ checklists/curricula showing when skills were mastered,
 - ▶ attendance information,
 - ▶ recommendations from professionals,
 - ▶ behavioral logs,
 - ▶ videotape/audiotape information,
 - ▶ parent interview, and
 - ▶ other assessment data.
- A statement that the appropriateness of ESY services has been determined. The school district/agency's ESY eligibility form is finalized for placement in the student's folder. The form will be included in the folder whether or not ESY services will be provided. If ESY program/services are determined to be required, an IEP team will develop an addendum to an IEP that specifies the ESY services. The ESY addendum shall include the following components:
 - ▶ the short-term objectives from the student's current IEP that will be continued during the extension of the school year;
 - ▶ the type of special education services to be provided, the location of these services, the amount of time to be spent in special education, and the projected beginning and ending dates of the extended services;
 - ▶ the type of related services to be provided, as appropriate, the location of these services, the amount of time to be spent in related services, and the projected beginning and ending dates of the extended services; and
 - ▶ the type of transportation to be provided, if necessary.
 - A statement as to whether the student will be required to follow the rules/guidelines as outlined in a school student handbook. Any adaptations that the IEP team has determined necessary shall also be explained.
 - A statement as to whether the student will work toward a diploma or a certificate.
 - A statement as to whether the student will participate in the statewide testing programs. All students with disabilities are required to participate in the regular testing program or in an alternate assessment. The IEP team will use the participation criteria (see the section titled "Participation in Assessments," below) to determine whether the student will be given the alternate assessment. A statement of any individual modifications in the administration of state or districtwide

assessments of student achievement that are needed in order for the student to participate in the assessment will also be included in the IEP. If the IEP team determines that the student will not participate in a particular statewide or districtwide student-achievement assessment (or part of such an assessment), an explanation as to why the particular assessment is not appropriate for the student and a statement that the student will be given an alternate assessment shall be included in the IEP.

- A statement as to whether the student requires promotion/retention standards that are different from those that nondisabled students must meet. If alternative promotion/retention standards are necessary, the IEP team will describe the alternative goals and promotion standards that will be applicable for the student.
- A statement as to the decisions regarding mental health counseling and all other related services that have been made during the IEP meeting. A FAPE must be made available to all children with disabilities residing in the state between the ages of three and twenty-one, including students with disabilities who have been suspended or expelled from school. The need for related services (e.g., mental health services including psychological counseling, physical therapy, occupational therapy) must be determined by the IEP team. All related services that are needed to enable the student to benefit from special education shall be listed in the IEP. These services will be provided at no cost to the student or his or her parents. Each related service and the hours per week the service will be provided shall also be stated in the IEP. Related services must be addressed, even if “NA” or “None” is appropriate. Changes in the amount of time allotted to each service listed in the IEP shall not be made without another IEP meeting’s being held. Goals, objectives, and present levels of performance are required for all related services other than routine or maintenance types of related services (e.g., daily minibus transportation), which require descriptions of the service(s) to be provided. Goals, objectives, and present levels of performance are required, however, for all related services involving any type of instructional activity provided to the student (e.g., learning to control behavior on the bus, learning to self-catheterize).
- A statement describing the special education and related services and supplementary aids and services to be provided to the student or on behalf of the student. Also included shall be a statement describing the program modifications or supports for school personnel that will be provided to the student to enable him or her (1) to advance appropriately toward attaining the annual goals, (2) to be involved and progress in the general curriculum in accordance with the present levels of educational performance, (3) to participate in extracurricular and other nonacademic activities, (4) to be educated and participate with other children with disabilities and nondisabled children in appropriate activities will be included in the IEP. “Supplementary aids and services” are aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. Supplementary services shall include, but will not be limited to, the following: itinerant or resource assistance, sign language interpreting, tutoring, consultation, note taking, assistive technology services, training for general

educators, and the like. Supplementary aids will include, but not be limited to, the following: large print textbooks, auditory trainers, curriculum adaptations, classroom modifications, adaptations, time management, behavior management, augmentative communication, assistive technology devices, and the like.

- A statement describing the specific services/aids to be provided for each type of supplementary service, program modifications/supports, or supplementary aid to be provided. For each supplementary service, program modification or supports, or aid to be provided, the IEP team shall indicate the frequency and location. The school district/agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability, if required, as a part of his or her special education, related services, or supplementary aids and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive a FAPE.
- A statement as to the extent (e.g., hours per week, periods per week) to which the student will participate in academic, nonacademic, and extracurricular activities in the general educational environment. The amount of time the student will spend in the special education program will also be stated in the IEP in terms of hours per week or periods per week.

Students with Disabilities Convicted as Adults and Incarcerated in Adult Prisons

There is no requirement that a FAPE must be provided to any student between the ages eighteen and twenty-one who, in his or her last educational placement prior to incarceration in an adult correctional facility, was not actually identified as being a child with a disability under the IDEA and did not have an IEP under Part B of the IDEA. The IEPs of students incarcerated in an adult correctional facility need not relate to the requirements of the IDEA relating to participation of children with disabilities in general assessments. The requirements of the IDEA relating to transition planning and transition services do not apply with respect to the students whose eligibility under Part B of the IDEA will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The requirements of Sections 300.340(a) and 300.347(a) relating to IEPs and Section 300.550(b) relating to the LRE do not apply with respect to the modifications described above.

Section 300.348**Agency Responsibilities for Transition Services**

If a participating agency, other than the school district/agency, fails to provide the transition services described in the IEP in accordance with the transition requirements in this section, the school district/agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP. Nothing in this section relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Section 300.349**Private School Placements by Public Agencies**

For a student with disabilities enrolled in private school and placed by a school district, the SDE shall ensure that the school district will conduct a meeting to develop the IEP prior to the provision of special education/related services by the private school to the student. Before the school district places a student with disabilities in a private school, the school district shall initiate and conduct a meeting to develop the IEP prior to the delivery of special education/related services by the private school. The school district shall ensure that an appropriate representative from the private school where the child is enrolled will participate in the development of the IEP and annual review.

After a student with disabilities is placed in a private school by the school district, any meetings to review or revise the student's IEP may be initiated by the private school at the discretion of the school district provided that the parents and a school district representative are involved in the decision-making process and agree to any proposed changes in the program before such changes are implemented. The responsibility for compliance with these requirements remains with the school district.

For a student with disabilities enrolled in a private or parochial school and receiving special education and related services, if warranted, from a school district, the school district where the student is a legal resident shall have the responsibility for initiating and conducting meetings to develop, review, and revise the IEP. The school district will be responsible for ensuring the participation of private school representatives in these meetings.

Section 300.350**IEP Accountability****Provision of Services**

Each school district/agency must provide special education and related services to a child with a disability in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives listed in the IEP.

Accountability

Each school district/agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the IDEA does not require that the agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

Construction—Parent Rights

Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in this section are not being made.

Procedural Safeguards

Section 300.129 Procedural Safeguards

Children with disabilities and their parents shall be afforded the procedural safeguards identified in the IDEA.

Section 300.500 General Responsibility of Public Agencies and Definitions

The SDE shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Sections 300.500–300.529.

Definitions

The term “child with a disability” means a child who has been evaluated in accordance with State Board Regulation 43-243.1 (“Criteria for Entry into Programs of Special Education for Students with Disabilities”) and Sections 300.530–300.536 of the IDEA as having one of the thirteen categories of disability and who, by reason thereof, needs special education and related services.

The term “day” means a calendar day, unless otherwise indicated as “school day” or “business day.”

The term “consent” means that

- The parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication.
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists what records, if any, will be released and to whom.
- The parent understands that the granting of consent is voluntary on his or her part and may be revoked at any time.
- If a parent revokes consent, such revocation is not retroactive—that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked.

The term “evaluation” refers to procedures used in accordance with State Board Regulation 43-243.1 (“Criteria for Entry into Programs of Special Education for Students with Disabilities”) to determine if a student meets the criteria to participate in a program of special education.

The term “expedited hearing” means that such timelines will be utilized to result in a decision’s being made within twenty-five calendar days of the request for the hearing, unless the parents and school officials agree otherwise. In no instance, however, may an expedited due process hearing result in a written decision’s being mailed to the parties more than forty-five calendar days from the district/agency’s receipt of the request for the hearing, without exceptions or extensions. At least two business days prior to an expedited hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluation that the party intends to use at the hearing. Either party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least two business days before the hearing. These timelines must be the same for hearings requested by parents or school districts. These timelines are different from the timelines established for impartial due process hearings that are not expedited. The decisions on expedited due process hearing are appealable consistent with the information in this section relating to appeals and civil action. The term “expedited evaluation” means that such timelines will be utilized to achieve the completion of the evaluation within twenty-five calendar days of the request for the evaluation.

The term “free appropriate public education” (FAPE) refers to special education and related services that

- are provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the SDE;
- include preschool, elementary school, or secondary school education in the state; and
- are provided in conformity with an IEP that meets all state and federal requirements.

The phrase “full explanation of procedural safeguards/listing of parental rights” means, at minimum, a full explanation of the following procedural safeguards and the state complaint procedures:

- independent educational evaluation,
- prior written notice,
- parental consent,
- access to educational records,
- the opportunity to present complaints to initiate due process hearings,
- the student’s placement during pendency of due process proceedings,
- procedures for students who are subject to placement in an interim alternative educational setting,

- requirements for unilateral placement by parents of students in private schools at public expense,
- mediation,
- due process hearings, including requirements for disclosure of evaluation results and recommendations,
- state-level appeals,
- civil actions,
- attorneys' fees, and
- the state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

The term “guardian” means a private individual who has been given the legal custody of a child. If a child is represented by a guardian, no surrogate parent is needed.

The term “individualized education program (IEP) team” refers to a group of individuals, as described in the school district/agency’s IEP procedures, who are approved by the SDE and are responsible for developing, reviewing, or revising an IEP for a student with a disability.

The term “meeting” means a prearranged event in which school district/agency personnel come together at the same time, either in person or through conference calls, video conferencing, or other methods of communication, to discuss any matter related to the identification, evaluation, educational placement, and the provision of a FAPE relating to an individual student with a disability. The term does not include informal or unscheduled conversations involving school district/agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the student’s IEP. The term also does not include preparatory activities that school district/agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. Parents must be present at all meetings where any decision is to be made about their child.

The term “native language,” if used with reference to an individual of limited English proficiency, refers to the language normally used by that individual or, in the case of a child, the language normally used by the parents of the child. In all direct contact with a student (including evaluation of him or her), communication shall be in the language normally used by the child in the home or learning environment. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

The term “parent” means a parent, a guardian, a person acting as the parent of a child, or a surrogate parent who has been appointed in accordance with State Board of

Education regulations. The term does not include the state if the child is a ward of the state. The term “parent” includes persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child’s welfare.

The term “foster parent” means an individual assigned by certain state or local agencies to serve as the custodian for a child. A foster parent may act as a parent (1) if the natural parents’ authority to make educational decisions on the child’s behalf has been extinguished under state law or (2) if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under state and federal law, and has no interest that would conflict with the interests of the child.

The term “pendency” refers to the period of time during which all matters at issue in a proceeding are still *pending* and no decisions have yet been made. In this interim period, the rule of what is called “stay put” is in effect:

- During the pendency of any administrative or judicial proceeding regarding an impartial due process hearing for matters other than dangerousness, weapons, or drugs, the student will remain in the present educational placement unless both parties agree otherwise.
- When the proceedings involve initial admission to public school, the student shall be placed in the public school program, with the consent of the parents, until completion of all the proceedings.
- If the decision of the hearing officer in a due process hearing or a review official in an administrative appeal agrees with the child’s parents that a change of placement is appropriate, such placement must be treated as an agreement between the school district/agency and the parents, and the student must be placed in that educational placement during pendency of the proceedings. If the decision of the hearing officer in a due process hearing or a review official in an administrative appeal is in favor of the school district/agency, however, the student shall be placed in an interim alternative educational setting that meets the following criteria:
 - ▶ be selected so as to enable the student to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student’s current IEP, that will enable him or her to meet the goals set out in that IEP; and
 - ▶ include services and modifications designed to address the behavior described in the above procedures so that such behavior does not recur.
- If the student is dangerous to self or others and the parents do not agree for him or her to be removed from the present educational placement, the school district/agency can seek injunctive relief through the courts to have the student removed. Schools are also able to remove a child under these circumstances

through the mechanism of an expedited due process hearing. If a hearing officer or a review official agrees with the child's parent that the child should not be removed from the present educational placement, such placement must be treated as an agreement between the school district/agency and the parents, and the student must remain in the present educational placement during pendency of the proceedings.

- If a parent requests a hearing or an appeal regarding a disciplinary action involving weapons, drugs, and injury to self or others, to challenge the interim alternative educational setting or the manifestation determination of a student in an interim alternative educational setting, the student must remain in the interim alternative educational setting pending the decision of the hearing or until the expiration of the time period provided for placement in such settings, whichever comes first, unless the parent and the school district/agency agree otherwise.

The term "personally identifiable" refers to information includes

- the name of the child, the child's parent, or other family member;
- the address of the child;
- a personal identifier, such as the child's social security number or student number; and
- a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

The term "surrogate parent" means a person appointed to act in place of parents when a child's parents or guardians cannot be identified, cannot be located, or when the child is a ward of the state. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and to the provision of a free and appropriate public education (FAPE) to the child.

In accordance with the regulations under the IDEA, the term "substantial evidence" means "beyond a preponderance of the evidence."

The term "ward of the state" means those students who are in the legal custody of the South Carolina Department of Social Services. "Legal custody" means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care.

Section 300.501**Opportunity to Examine Records and Parent Participation in Meetings**

The parents of a child with a disability shall be afforded, in accordance with the procedures of Sections 300.562–300.569, an opportunity

- to inspect and review all education records with respect to the identification, evaluation, educational placement of the child and to the provision of a FAPE for the child and
- to participate in meetings with respect to the identification, evaluation, and educational placement of the child and to the provision of a FAPE for the child.

Parent Participation in Meetings

The school district/agency shall provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings, including

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend (at least seven calendar days prior to the meeting, except in the instance of a notification to an expedited hearing, which shall be at least two business days prior to the expedited hearing). A copy of the communication delivered to each parent, legal guardian, or surrogate parent must be maintained in the student's folder.
- Notifying parents of their right to schedule the meeting at a mutually agreed-upon time and place. The purpose, time (including date and hour) and location of the meeting and the persons who will be in attendance (names and specific positions) shall also be included in the notification.

A meeting does not include informal or unscheduled conversations involving school district/agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that school district/agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Parent Involvement in Placement Decisions

The school district/agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district/agency shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.

A placement decision may be made by an IEP team without the involvement of the parents if the school district/agency is unable to obtain the parents' participation in this decision. In this case, the school district/agency shall have a record of its attempts to ensure their involvement at a mutually agreed on time and place, such as

- detailed records of telephone calls made or attempted and the results of those calls,
- copies of correspondence sent to the parents and any responses received, and
- detailed records of visits made to the parents' home or place(s) of employment and the results of those visits.

The school district/agency shall take whatever action is necessary to ensure that the parents understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Section 300.502 Independent Educational Evaluation

The term "independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district/agency responsible for the education of the student. "Public expense" means that the school district/agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Parents will be informed of their right to obtain an independent educational evaluation if they disagree with the evaluation obtained by the school district/agency as specified in the full explanation of procedural safeguards/listing of parental rights. They will be provided a list of places to obtain an independent educational evaluation upon request and the school district/agency criteria applicable for independent educational evaluations.

When a parent requests an independent evaluation at public expense, the school district/agency must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense, unless the school district/agency demonstrates in the due process hearing that the evaluation obtained by the parent does not meet school district/agency criteria.

If the final decision is that the district/agency's evaluation is appropriate, the parent still has the right to obtain an independent educational evaluation, but not at public expense.

If a parent requests an independent educational evaluation, the school district/agency may ask the parent to explain the reason why he or she objects to the school district/agency's evaluation. An explanation by the parent may not be required, however, and the school district/agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district/agency evaluation.

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation shall be considered by the school district/agency in any decision made with respect to the provision of a FAPE for the student and may be presented as evidence at a hearing regarding the student.

If a hearing officer requests an independent evaluation as part of the hearing, the cost of the evaluation shall be a public expense.

Whenever an independent evaluation is conducted at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the school district/agency uses when it initiates an evaluation.

Other than criteria regarding school district/agency criteria of the examiner, the school district/agency shall not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Section 300.503 Prior Notice by the Public Agency and Content of Notice

Written notice that meets the requirements listed below must be given to the parents of a child with a disability at least seven calendar days before the school district/agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. Written notice must also be given to parents if the school district/agency refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. If the notice relates to an action proposed by the school district/agency that also requires parental consent, the notice may be given at the same time parental consent is requested.

Required Content of Notice

The written notice will include the following:

- A description of the action proposed or refused by the school district/agency.
- An explanation of why the school district/agency proposed or refused to take the action.
- A description of any other options considered and reasons why these options were rejected.
- A description of each evaluation procedure, test, record, or report the school district/agency uses as a basis for the proposal. Procedures include broad areas of assessment, such as physical, language, social, behavioral, emotional, achievement, and intellectual abilities and the types of professionals involved in administering the tests or collecting information.

- Either a full explanation of all procedural safeguards/listing of parental rights or both of the following:
 - ▶ a statement that the parents of a student with a disability have protection under the procedural safeguards of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
 - ▶ a list of sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

Notice in Understandable Language

The full explanation of procedural safeguards/listing of parental rights and all notices to parents of students with disabilities will be

- written in language understandable to the general public and
- provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly unfeasible to do so.

If the native language or other mode of communication of the parent is not a written language, the coordinator of Programs for Children with Disabilities will ensure that

- the notice is translated orally or by other means to the parent in his or her native language or other mode of communication,
- the parent understands the content of the notice, and
- there is written evidence that the requirement regarding the procedural safeguards notice have been met.

Section 300.504 Procedural Safeguards Notice

A copy of the full explanation of all of the procedural safeguards/listing of parental rights available to the parents of a student with a disability will be given to the parents at a minimum

- upon initial referral for evaluation,
- upon each notification of an IEP meeting,
- upon reevaluation of the student, and
- upon receipt of a request for a due process hearing under the IDEA.

The procedural safeguards notice will include a full explanation of all the procedural safeguards included in the definition of full explanation of procedural safeguards/listing

of parental rights listed in the section above on definitions. This notice will meet the requirements reflected above regarding “notice in understandable language.”

The following notice is required when it is anticipated that a change of placement may be recommended during an IEP team meeting and any other instances where the school district/agency proposes or refuses to initiate or to change the identification, the evaluation, the educational placement, or the provision of a FAPE for the student. The school district/agency will send a notice at least seven calendar days prior to the proposed action. The notice to parents will include

- A description of the action proposed or refused by the school district/agency.
- An explanation of why the school district/agency proposed or refused to take the action.
- A description of any other options considered and the reasons why these options were rejected.
- A description of each evaluation procedure, test, record, or report the school district/agency uses as a basis for the proposal. Procedures include broad areas of assessment, such as physical, language, social, behavioral, emotional, achievement, and intellectual abilities and the types of professionals involved in administering the tests or collecting information.
- Either a full explanation of all procedural safeguards or both of the following:
 - ▶ a statement that the parents of a student with a disability have protection under the procedural safeguards of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
 - ▶ a list of sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

Section 300.505 Parental Consent

Informed parental consent must be obtained before

- An initial evaluation or reevaluation can be conducted (however, consent for initial evaluation may not be construed as consent for initial placement).
- Initial provision of special education and related services to a child with a disability.
- Change in placement, including changes in the category of disability or the program model, other than dismissal from a program of special education. This informed consent need not be obtained, however, if the school district/agency can document that it has taken reasonable measures to obtain such consent and the child’s

parents have failed to respond. Parents shall be provided a minimum of two notifications requesting they sign the permission for change of placement. If the parents do not respond following a minimum of two notifications, the school district/agency shall not implement the change of placement for a period of ten days following the second notification.

Should parents refuse consent for a change in placement, school districts/agencies must take any steps required to provide the child with a FAPE (including mediation or an impartial due process hearing) to ensure that the refusal for consent for the change in placement does not result in a failure of the state to provide the child with a FAPE.

Parental consent shall not be obtained before

- a review of existing data is conducted as part of an evaluation or a reevaluation and
- a test or other evaluation is administered to all children, unless consent is required of parents of all children before administration of that test or evaluation.

Prior parental consent for evaluation shall be obtained when students are singled out to receive selective screening or evaluation instruments beyond mass screening, such as formal and standardized assessments. Procedural safeguards requirements, including provision to parents of a listing of all parental rights, must be implemented at this time. Parental consent is not required for routine mass screening for vision, hearing, and speech, even when used for staffing decisions. Permission for the intervention process is not required, but parents shall participate in the process. When the intent is that observations completed during the intervention process are to be used in evaluating a child for a program of special education, due process requirements under the IDEA shall be implemented.

Procedural safeguards do not apply to a child receiving remedial services in the general classroom for an educational problem prior to any determination that the child is suspected of having a disability. Parents will be informed, however, that even while attempts are being made by school district/agency staff to alleviate an educational problem in the general classroom, the parents have the right to request an evaluation of their child if they suspect that the child has a disability and qualifies for services under the IDEA. Although a school district/agency can advise the parents as to why it believes the child should participate in an intervention program before an IDEA evaluation is conducted, the school district/agency cannot refuse to conduct the evaluation or delay the evaluation until the alternative strategies have been tried if the school district/agency suspects the child has a disability. If the school district/agency disagrees with the parents and does not suspect the child has a disability, it may refuse to conduct an evaluation and must provide written notice to the parents of the refusal to initiate the evaluation. In that instance, the parents may request mediation or a due process hearing on the matter of the refusal to initiate an evaluation. If, however, the school district/agency suspects the child has a disability, evaluation procedures will be initiated, including parental consent for evaluation, provision to parents of the full explanation of procedural safeguards/listing of parental rights, and the initiation of the forty-five

calendar day timeline. Once permission for evaluation is obtained, or following the decision of a hearing officer, subject to appeal to the SDE, the evaluation will be completed within forty-five calendar days.

If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the school district/agency should determine on a case-by-case basis whether to pursue the evaluation (based on such factors as the age of the child, the severity of the disability, and the need to provide the child with a FAPE) by using the due process hearing procedures or the mediation procedures included in this document, if appropriate.

Permission for reevaluation shall be obtained prior to the conducting of any additional assessments. Informed parent consent need not be obtained if the school district/agency can document that it has taken reasonable measures to obtain such consent and the child's parent has failed to respond. Prior to the conducting of additional assessments, parents shall be provided a minimum of two notifications requesting that they sign the permission for reevaluation.

The school district/agency shall not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the school district/agency, except as stipulated in this document.

Section 300.506 Mediation

A mediation process is available to allow parties to resolve disputes when the school district/agency proposes or refuses to initiate or to change the identification, the evaluation, the educational placement, or the provision of a FAPE for the child. Mediation shall be offered whenever a due process hearing is requested. The following principles apply to the mediation process:

- It shall be voluntary on the part of the parties.
- It shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under federal and state requirements.
- It shall be conducted by an impartial mediator who has been trained by the SDE in effective mediation techniques. The mediator must be included on the list maintained by the SDE of persons who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
- If a mediator is not selected on a random or rotation basis from the list of mediators maintained by the SDE, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
- The state bears the cost of the mediation process described below. This cost is handled by the state's paying directly for the training of all mediators and by its

flowing through Part B, IDEA funds that may be used for all aspects of the mediation process, including the costs of meetings to encourage mediation.

- Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
- An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.
- Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.
- An individual who serves as a mediator
 - ▶ shall not be an employee of the school district or any state agency that provides a FAPE for students with disabilities and
 - ▶ shall not have a personal or professional conflict of interest.
- A person who otherwise qualifies as a mediator is not an employee of a school district or state agency solely because he or she is paid by the school district/agency to serve as a mediator.
- A school district/agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who
 - ▶ is under contract with a parent training and information center or community parent resource center in the state, as established under Section 682 or 683 of the IDEA, or an appropriate alternative dispute resolution entity, and
 - ▶ will explain the benefits of the mediation process and encourage the parents to use the process.

Section 300.507 Impartial Due Process Hearing and Parent Notice

A parent or the school district/agency may initiate a due process hearing when the school district/agency proposes or refuses to initiate or to change the identification, the evaluation, the educational placement, or the provision of a FAPE for the child. The hearing must be conducted by the school district/agency directly responsible for the education of the child. The following principles apply to due process hearings:

- When the school district/agency initiates a hearing on the proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE for the student, the coordinator of Programs for Children

with Disabilities shall send notice to the parents by certified mail, return receipt requested, on the same day the request for the hearing is submitted to an impartial hearing officer. The school district/agency shall inform the parents of the availability of mediation. Additionally, the notice to parents shall include

- ▶ A copy of the original notice requesting permission for the proposed action, as well as a statement as to the reason that the hearing is being requested.
 - ▶ A statement that school files, reports, and records pertaining to the child shall be available for inspection and copying in accordance with the school district's/agency's procedures concerning confidentiality.
 - ▶ A detailed description of all the rights regarding procedures at the due process hearing.
 - ▶ A list of agencies/organizations in the community where free/low cost legal and other relevant services are available. This information shall also be provided upon a request by the parent at any time.
 - ▶ A statement of the parents' right to an appeal of the decision resulting from the due process hearing.
 - ▶ The statement that "In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party."
- Funds under the IDEA may not be used to pay attorneys' fees.
 - When parents initiate a hearing on the proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE for the student, the parent of a student with a disability or the attorney representing the student shall provide notice, which shall remain confidential, to the school district/agency in a request for a hearing under this section.
 - A model form developed by the SDE shall be provided to parents to assist them in filing a request for a due process hearing. The notice shall include the following:
 - ▶ the name of the student;
 - ▶ the address of the residence of the student;
 - ▶ the name of the school the student is attending;
 - ▶ a description of the nature of the problem of the student relating to the proposed initiation or change, including facts relating to the problem; and
 - ▶ a proposed resolution of the problem to the extent known and available to the parents at the time.

Note: The school district/agency shall not deny or delay a parent's right to a due process hearing for failure to provide this notice.

Section 300.508 Impartial Hearing Officer

The school district/agency shall procure persons to serve as impartial hearing officers for due process hearings conducted at the local level. Only persons trained by the SDE will conduct hearings for the school district/agency. Persons who were formerly employed by the school district/agency will not be considered eligible.

The school district/agency will require each person agreeing to serve as a hearing officer to sign a statement verifying that the required qualifications are met. These qualifications are as follows:

- A person serving as a hearing officer shall be at least twenty-one years of age and be a high school graduate or hold an equivalent credential.
- A person serving as a hearing officer will be selected without regard to race, sex, creed, or category of disability.
- A person serving as a hearing officer shall be unbiased toward any party involved in the hearing.
- A person serving as a hearing officer shall have no personal or professional interest that would conflict with his or her objectivity in the hearing.
- A person serving as a hearing officer shall not be an officer, agent, school board official, or employee of the school district/agency that is involved in the education or care of the student. A person who otherwise qualifies to conduct a hearing is not an employee of the school district/agency solely because he or she is paid by the school district/agency to serve as a hearing officer.

Each school district/agency shall keep a list of the persons who serve as hearing officers and shall maintain signed statements of qualifications, in addition to statements of pertinent information such as age, level of education attained, and current occupation or former occupation if retired.

Section 300.509 Hearing Rights

The school district/agency shall submit the request to an impartial due process hearing officer within ten calendar days after receiving the request and shall notify the parents of all items specified above in the section titled "Impartial Due Process Hearing and Parent Notice."

Within five calendar days after receiving a request for a hearing, the hearing officer will notify the parties of the time, date, and location of the hearing. The school

district/agency will provide assistance to the hearing officer, if necessary, concerning the acquisition of a meeting room and any secretarial assistance needed. The notification will be provided twenty calendar days prior to the scheduled date of the hearing, which will be conducted at a time, date, and location reasonably convenient to the parents and student involved. The notice shall inform the parties of the following:

- their right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- their right to present evidence, confront, cross-examine, and compel the attendance of witnesses;
- their right to prohibit the introduction of any evidence that has not been disclosed to that party at least five calendar days prior to the hearing;
- their right to obtain a written transcript—or, at the option of the parents, an electronic verbatim transcript—of the hearing (at no cost to the parents);
- their right to obtain a written transcript—or, at the option of the parents, an electronic verbatim transcript—of the findings of fact and the decisions made at the hearing (at no cost to the parents);
- the parents' right to have present during the hearing the student who is the subject of the hearing; and
- the parents' right to open the hearing to the public (otherwise, hearings will be closed).

During the pendency of the proceedings, the following principles apply:

- The student will remain in the present educational placement unless both parties agree otherwise.
- If the due process hearing involves the student's initial admission to public school, the student—with the consent of the parents—shall be placed in the public school program until the completion of all the proceedings.
- If the student is dangerous to self or others and the parents do not agree for the student to be removed from the present educational placement, the school district/agency can seek injunctive relief through the courts or through an expedited due process hearing to have the student removed.
- If the decision of the hearing officer in a due process hearing or a review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school district/agency and the parents and the student must be placed in that educational placement until the completion of all the proceedings. If the decision of the hearing

officer in a due process hearing or a review official in an administrative appeal is in favor of the school district/agency, however, the student shall remain in the present educational placement unless both parties agree otherwise.

At least five business days prior to a hearing described in this section, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party who fails to comply with this paragraph from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

A due process hearing shall be conducted in accordance with the following:

- Within forty-five calendar days after the school district/agency receives a request for or initiates a due process hearing, a final decision shall be reached and the parties shall be notified in accordance with the following procedure. The hearing officer, however, may grant specific extensions of time requested by either party beyond the forty-five day time period.
- The hearing officer shall have the power of subpoena.
- The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner. All the parties involved in the hearing shall have an opportunity to present evidence and testimony.
- The parent and the school district/agency may have legal counsel and witnesses present at the hearing.
- The hearing shall be closed to the public unless the parent requests an open hearing.
- The parent and the school district/agency and their respective representatives shall have the right to present evidence and testimony.
- The parent and the school district/agency and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.
- An audiotape of the hearing shall be made.
- Interpreters shall be provided at no charge, as warranted, for persons whose primary language is other than English or for persons who are unable to communicate through normal modalities.
- Within five calendar days after the hearing, the hearing officer shall issue a decision in accordance with the following requirements:

- ▶ The decision shall be in writing and shall be transmitted by certified mail to the parent and to the school district/agency.
- ▶ The decision of the hearing officer shall include findings of fact and conclusions, and shall state the reasons for these. The decision shall either approve or disapprove the proposed evaluation, placement, or change in placement, or action in question.
- ▶ The hearing officer shall make an independent decision based solely on evidence and testimony presented at the hearing.
- ▶ Upon request of the parents, a written transcript—or, at their option, an electronic verbatim transcript record—of the hearing shall be provided (at no cost to them).
- ▶ Upon request of the parents, a copy of a written transcript—or, at their option, an electronic verbatim transcript—of the findings of facts and decisions made at the hearing shall be provided (at no cost to them).
- ▶ The decision of the hearing officer shall include a statement of both parties' right to an appeal to the SDE.

The following information concerning appeals shall also be included with the hearing officer's decision:

If either party disagrees with the decision of a hearing officer regarding a due process hearing

- An SDE appeal/impartial review may be initiated within ten calendar days of the SDE's receiving notice of the decision.
- The state-level administrative reviewing officer has the authority to grant a request for a specific extension of time in which to file a written administrative review request.
- A request for an extension of time in which to file an administrative review (beyond the ten-day time limit) will be made in writing to the director of the Office of Exceptional Children, who will submit such request to the state-level administrative reviewing officer within five working days.
- Within ten working days of receiving a request for an extension of time for filing an administrative review request, the state-level administrative reviewing officer may grant such a request for good cause shown. The concept of "good cause" is not exhaustible; however, it shall not include negligence or a matter of low priority in filing the request for a review.
- In no event will the state-level administrative reviewing officer grant an extension of more than twenty days beyond the original ten-day timeline.

- Thus, the party requesting an extension of time will have a maximum of twenty calendar days from the date of their receipt of the decision of the state-level reviewing officer to grant the request for an extension in which to file a written administrative review request.
- All written decisions of local due process hearing officers shall notify all parties of their right to request an extension of time in which to file a request for administrative review.
- An appeal directed to the SDE shall be in written form. If parents are unable to communicate through written notice, the school district/agency shall provide assistance in this regard.
- An appeal submitted to the SDE shall include an electronic verbatim or written transcript, which the school district/agency will provide. When parents appeal the decision of the local due process hearing officer, the school district/agency conducting the hearing shall provide the electronic verbatim or written transcript to the SDE. If an electronic verbatim transcript is of such poor quality that the SDE hearing officer would be effectively prevented from conducting the review, the SDE hearing officer may order a written transcript.

An appeal shall include a statement of the decision following the hearing conducted by the school district/agency, the specific points being appealed, copies of all items entered as evidence, and the names and addresses of the parents, if the school district/agency is appealing the decision. The appellant may also include written argument. When parents appeal the decision of the local due process hearing officer, the school district/agency conducting the hearing shall provide a statement of the decision following the hearing and copies of all items entered as evidence.

Any party filing an appeal with the SDE shall notify the other party of such and provide a copy of the appeal, including written arguments, to the other party.

Not later than thirty calendar days after the receipt of a request for a review by the SDE, a final decision is reached and a copy of the decision is mailed to each of the parties. The hearing or reviewing officer, however, may grant specific extensions of time beyond the thirty-day period for administrative appeals/impartial reviews at the request of either party.

Any party aggrieved by the findings and decisions made at the SDE-level administrative appeal/impartial review has the right to bring a civil action.

The school district/agency shall transmit the local hearing officer's written findings of fact and decisions (after deleting personally identifiable information) to the SDE's Office of Exceptional Children for transmittal to the State Advisory Council on the Education of Individuals with Disabilities. Additionally, these findings and decisions shall be made available to the public. All documentation of the local hearing shall be maintained by the school district/agency.

Should the school district/agency appeal the decision of the local hearing officer to the SDE's Office of Exceptional Children, the school district/agency shall be responsible for ensuring that required procedures concerning an appeal are carried out. Additionally, the school district/agency will maintain all documentation concerning the appeal.

If there is an appeal, the SDE shall conduct an impartial review of the hearing. The official conducting the review shall be responsible for carrying out the following:

- Examining the entire hearing record.
- Ensuring that the procedures at the hearing were consistent with the requirements of due process.
- Seeking additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in this section relative to impartial due process hearings apply.
- Affording the parties an opportunity for oral or written argument, or both (at his or her discretion).
- Making an independent decision on completion of the review.
- Giving a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

If there is an appeal, each review involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved. After deleting any personally identifiable information, the SDE shall transmit the findings and decisions to the State Advisory Council on the Education of Individuals with Disabilities and make those findings and decisions available to the public.

Section 300.510 Finality of Decision, Appeal, and Impartial Review

The decision of the hearing officer is binding on all parties, and any action directed by the hearing officer shall be initiated immediately unless an appeal is filed.

Section 300.511 Timelines and Convenience of Hearings and Reviews

The timelines for hearings and reviews are included in the above section titled "Hearing Rights."

Section 300.512 Civil Action

Any party aggrieved by the findings and decision made under Section 300.507 or Sections 300.520–300.528 who does not have the right to an appeal under Section 300.510(b) and any party aggrieved by the findings and decision under Section

300.510(b) both have the right to bring a civil action with respect to the complaint presented pursuant to Section 300.507. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

The district courts of the United States have jurisdiction of actions brought under Section 615 of the IDEA without regard to the amount in controversy.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures under Sections 300.507 and 300.510 of the IDEA regulations must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

Section 300.513 Attorneys' Fees

In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under Section 615 of the IDEA or under the procedural safeguards section of the regulations under the IDEA.

A court awards reasonable attorneys' fees under Section 615(i)(3) of the IDEA consistent with the following:

- Determination of amount of attorneys' fees. Fees awarded under Section 615(i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
- Prohibition of attorneys' fees and related costs for certain services. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if the *all* of the following situations exist:
 - ▶ the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

- ▶ the offer is not accepted within ten days; and
 - ▶ the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial process under Section 300.307 or Sections 300.520–300.528.
 - Exception to prohibition on attorneys' fees and related costs. Notwithstanding the paragraph on prohibition of attorneys' fees in this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
 - Reduction of amount of attorneys' fees. Except as provided in this section, the court reduces accordingly the amount of the attorneys' fees awarded under Section 615 of the IDEA, if the court finds that the following occurs:
 - ▶ The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy.
 - ▶ The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience.
 - ▶ The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
 - ▶ The attorney representing the parent did not provide to the school district/agency the appropriate information in the due process complaint in accordance with Section 300.307(c).
 - Exception to reduction in amount of attorneys' fees. The provisions regarding reduction of amount of attorneys' fees do not apply in any action or proceeding if the court finds that the state or school district/agency unreasonably protracted the final resolution of the action or proceeding or if there was a violation of Section 615 of the IDEA.

Section 300.514 Child's Status during Proceedings

Except as provided in Section 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under Section 300.507, unless the state or school district/agency and the parents of the child agree otherwise, the child involved in the complaint shall remain in his or her current educational placement. If the complaint involves an application for initial admission to a school district/agency, the child with the consent of the parents must be placed in the school district/agency until the completion

of the proceedings. If the decision of a hearing officer in a due process hearing conducted by the SDE or a state review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or the school district/agency and the parents for the purposes of this section.

Section 300.515 Surrogate Parents

Each school district/agency shall ensure that the rights of a child are protected if any one of the following situations exists:

- No parent, as defined above, can be identified.
- The school district/agency, after reasonable efforts, cannot discover the whereabouts of a parent.
- The child is a ward of the state under the laws of the state.

Duty of School District/Agency

In an effort to determine if the parent or guardian is in fact unknown or cannot be located or if the child is a ward of the state, the school district/agency shall make a reasonable effort to locate a parent. Reasonable efforts include, but are not be limited to, the following: documented phone calls, certified letters, and visits to the parents' last known address, and documented contacts with relatives, neighbors, and other agencies. Efforts must be documented.

Any employee of a school district/agency, the SDE, or a residential school or hospital, or any physician, judicial officer, or other person whose work involves the education or treatment of children and who knows a child needing special education services and knows that the parents or guardians are either not known or cannot be located or that the child is a ward of the state, may file a request for assignment of a surrogate parent. This request must be made to the school district/agency involved in the child's educational process.

The school district/agency shall assign surrogate parents only after careful determination has been made and written documentation maintained that the parent or guardian is unknown or cannot be located or that the child is a ward of the state, as defined above. The appointment of a surrogate parent may not be utilized to circumvent the procedures for gaining parental consent for evaluation/placement or to replace mediation or due process hearings to obtain consent. After obtaining initial consent for placement or following the decision of a hearing officer for placement to take effect, school districts/agencies may obtain written parental authorization for the appointment of a surrogate parent. The surrogate parent may represent the child until such time as the parents present themselves to represent the child.

In cases where a parent is unresponsive, lives a great distance from their child's school, or is incarcerated, the school district/agency may obtain written authorization from the parent to appoint a surrogate parent to represent the child after the initial consent for placement has been obtained or after the decision for placement to take effect is made by a hearing officer. Parent permission for the appointment of a surrogate must be voluntary and explicitly authorized in writing and is revocable at any time. The surrogate, once appointed, may then represent the child until such time as the parent revokes authorization for the child to be represented by the surrogate parent.

Qualifications

In order to be selected as a surrogate parent, the individual must

- be an adult with no interest that conflicts with the interest of the child whom he or she represents,
- have knowledge and skills that ensure adequate representation of the child,
- be capable of becoming thoroughly acquainted with the child's educational needs,
- be capable of understanding the cultural and linguistic background of the children he or she represents, and
- not be an employee of the SDE, the school district, or any other agency (public or private) involved in the education or care of the child.

A school district agency may select as a surrogate a person who is an employee of a nonpublic agency that provides only noneducational care of the child and who meets the other standards for persons selected as surrogates.

Assignment

When a child with a disability needs a surrogate parent, the child's school district is responsible for appointing a surrogate. When a child who needs a surrogate parent is placed in a foster home and is presented for placement in a program for children with disabilities in the school district in which the foster parent resides, the school district is responsible for appointing a surrogate parent. When a child who needs a surrogate parent is placed by a school district or the court for educational or noneducational reasons in a state-operated program having educational responsibility, the state-operated program is responsible for appointing a surrogate parent.

Removal

A surrogate parent shall be removed when a parent appears to represent the child or revokes consent or when the child is no longer eligible for special education. A person

serving as a surrogate may resign at any time by submitting his or her resignation in writing to the school district/agency superintendent or chief administrative officer or his or her designee.

In cases where there are disagreements about the choice of a surrogate, a due process hearing may be conducted to challenge the qualifications of the person serving as a surrogate parent.

Procurement

The school district/agency shall procure persons who can serve as surrogate parents and shall maintain a registry of eligible persons, and the school district/agency may compensate or make arrangements for the compensation of such persons when they are utilized. A surrogate is not an employee of the school district/agency solely because he or she is paid to serve as a surrogate parent.

Surrogates, when needed, shall be selected by the school district/agency superintendent or chief administrative officer or his or her designee, consistent with the requirements in this section and the IDEA regulations. A qualified person external to the geographical boundaries of the school district/agency may be selected.

Section 300.517 Transfer of Parental Rights at Age of Majority

All rights of the parents shall be transferred to the student upon reaching the age of majority (eighteen years of age). Prior to the student's reaching the age of majority, the school district/agency will designate a person to explain orally to the student his or her rights under the IDEA at the IEP team meeting before the student turns eighteen. The school district/agency shall provide notice to the parents and the student regarding the transfer of rights. The school district/agency shall provide any notice required under the IDEA to both the parent and the student. All rights of parents under the IDEA transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

If the student has been determined to be incompetent in accordance with state laws, or if the parent obtains a power of attorney, or if the student signs a waiver provided by the school district/agency stating the parent will continue to be accorded all rights under the IDEA, the rights will not be transferred. The student may, however, revoke the power of attorney or the waiver at any time.

In those instances in which a child who is legally determined to be incompetent to make such decisions for himself or herself, and for whom legal guardianship is required beyond the age of majority, the legal guardian shall maintain the rights to privacy.

Section 300.519

Change of Placement for Disciplinary Removals

For purposes of removal of a student with a disability from his or her current educational placement under this section, a change of placement occurs if the removal is for more than ten consecutive school days or the student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to each other.

FAPE for Students Suspended or Expelled from School

A. Removals for up to ten school days in a school year:

School districts/agencies need not provide services during periods of removal to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

B. Short-term removals that do not constitute a change in placement after student has already been removed for ten school days in a school year:

In the case of a student with a disability who has been removed from his or her current placement for more than ten school days in that school year, the school district/agency, for the remainder of the removals, shall ensure that services are provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP, if the removal is done under the school personnel's authority to remove for not more than ten consecutive school days, as long as that removal does not constitute a change of placement. A change in placement occurs when a student is removed for more than ten consecutive school days or when a child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. School personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary.

C. Long-term removals (other than forty-five day removals) when student's behavior is not a manifestation of disability after student has already been removed for ten school days in a school year:

The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

D. Removals for weapons and drugs:

Removals to interim alternative educational placements for up to forty-five days by school personnel are permissible for weapons or drug offenses (whether or not the offenses are a manifestation of the student's disability). The IEP team, however, must determine the extent to which services must be provided in interim alternative educational settings. Placements in such settings must

- be selected by the IEP team so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP, and
- include services and modifications to address the student's behavior relating to weapons and drugs that are designed to prevent the behavior from recurring.

E. Removals by hearing officers for behavior that is substantially likely to result in injury to self or others:

Removals to interim alternative educational placements for up to forty-five days by a hearing officer are permissible based on a determination that maintaining the current placement of the student is substantially likely to result in injury to the student or to others if he or she remains in the current placement (whether or not the offenses are a manifestation of the student's disability). The hearing officer must determine that the interim alternative educational setting that is proposed by school personnel, who have consulted with the student's special education teacher, meets the following requirements:

- be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP, and
- include services and modifications to address the student's behavior that was substantially likely to result in injury to self or others and that are designed to prevent the behavior from recurring.

F. Any removal where parent agrees to change in placement:

The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

In accordance with state statutes, no student, including a student with a disability, may be suspended in excess of ten days for any one offense and for not more than thirty days in any one school year.

Section 300.520 Authority of School Personnel

School personnel may order

- the removal of a student with a disability from his or her current educational placement for not more than ten consecutive school days—to the extent that removal would be applied to students without disabilities—for any violation of school rules and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement in accordance with the procedures in this section; and
- a change in placement of a student with an disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five days if either of the following occurs:
 - ▶ The student carries or possesses a weapon to or at school, or on school premises, or to or at a school function under the jurisdiction of a school district.
 - ▶ The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state educational agency or a school district.

Either before or not later than ten business days after the first removal of the student for more than ten school days in a school year or the commencing of a change of placement, as described above, including actions taken in instances of drugs or weapons described above, the following steps must be taken:

- If a functional behavioral assessment has not been conducted and a behavioral intervention plan implemented for the student before the behavior that resulted in the removal described above, the school district/agency shall convene an IEP meeting to develop an assessment plan.
- If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.

As soon as practicable after developing the behavioral intervention plan and completing the assessments required by the plan, the school district/agency shall convene an IEP meeting to develop appropriate interventions to address that behavior and shall implement those interventions.

If, subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement under the above procedures, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

The federal definitions of the terms "controlled substance," "illegal drug," and "weapon" included in the IDEA shall apply to these procedures as follows:

- The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, and V in section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c)).
- The term "illegal drug" means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed and used under any other authority under the Controlled Substances Act or under any other provision of federal law.
- The term "weapon" has the definition given to the term "dangerous weapon" in 18 U.S.C. § 930(g)(2): "The term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length."

Section 300.521 Authority of Hearing Officer

A hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five days if the hearing officer, in an expedited due process hearing

- determines that the school district/agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;
- considers the appropriateness of the student's current placement;
- considers whether the school district/agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

- determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements set forth in the following procedure.

Section 300.522 Determination of Setting

The IEP team shall determine the alternative educational setting referred to in the above procedures when there is a change in placement made by school personnel in cases of weapons or drugs.

Any interim alternative educational setting in which a student is placed under these procedures shall

- be selected so as to enable the student to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable him or her to meet the goals set out in that IEP and
- include services and modifications designed to address the behavior described in the above procedures so that such behavior does not recur.

Section 300.523 Manifestation Determination Review

If an action is contemplated regarding behavior for violations involving weapons or drugs as described in the above procedures, or if a hearing officer has ordered a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five days, or if an action involving a removal of a student from the student's current educational placement for more than ten school days in a given school year is contemplated for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of the school district/agency that applies to all students, the following procedures will be followed:

- Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision, and a full explanation of procedural safeguards will be provided to the parents.
- Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

The manifestation determination review shall be conducted by the IEP team and other qualified personnel in a meeting.

In carrying out a manifestation review, the IEP team may determine that the behavior of the student was not a manifestation of his or her disability only if the IEP team and other qualified personnel first consider, in terms of the behavior subject to disciplinary action, all relevant information, including

- the evaluation and diagnostic results, as well as other relevant information supplied by the parents of the student,
- the observations of the student, and
- the student's IEP and placement.

After completing the above considerations, the IEP team and other qualified personnel shall make the following determinations:

- that, in relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and that special education services, supplementary aids and services, and behavior intervention strategies provided were consistent with the student's IEP and placement and
- that the student's disability did not impair his or her ability capacity to understand the impact and the consequences of the behavior that was subject to disciplinary action and that the disability did not impair his or her capacity to control such behavior.

If the IEP team and other qualified personnel determine that any of the standards in the above procedure were not met, the behavior shall be considered a manifestation of the student's disability.

The manifestation review may be conducted at the same IEP meeting that is convened under the procedure above regarding development/review of a functional behavioral assessment plan and appropriate behavioral interventions.

If, in the manifestation determination review, the school district/agency identifies deficiencies in the student's IEP or placement or in their implementation, immediate steps shall be taken to remedy those deficiencies.

Section 300.524 Determination That the Behavior Was Not a Manifestation of the Disability

If the result of the manifestation review is a determination that the behavior of the student with a disability was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student, except that a FAPE (i.e., appropriate services to enable the student to advance toward achieving the goals set out in the student's IEP) shall continue to be provided.

If the school district/agency initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability shall be

transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

Regarding the student's status during the due process proceedings (i.e., during the pendency), the rule of "stay put," as described in the definition section of these procedures, applies if a parent requests a hearing to challenge a determination made through the manifestation review that the behavior of the student was not a manifestation of the student's disability. The only time an exception shall be made is when school personnel maintain that it is dangerous for the student to be in the placement prior to his or her removal to the interim alternative education setting, and the school district/agency has requested an expedited due process hearing.

Section 300.525 Parent Appeal

If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under the discipline procedures, the parent may request a due process hearing. The school district/agency shall arrange for an expedited hearing in any case described in the above discipline procedures if requested by a parent.

In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the school district/agency has demonstrated that the student's behavior was not a manifestation of his or her disability consistent with procedures regarding the decision of the manifestation review team.

In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall

- determine that the school district/agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;
- consider the appropriateness of the student's current placement;
- consider whether the school district/agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements in these procedures regarding the determination of setting.

Section 300.526**Placement during Appeals**

If a parent requests a hearing regarding a disciplinary action taken by school personnel or by a hearing officer as described in the above procedures to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in these procedures, whichever occurs first, unless the parent and the school district/agency agree otherwise.

If a student is placed in an interim alternative educational setting as described in the above procedures and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceedings to challenge the proposed change in placement, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting) except as provided in the following procedure.

If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the school district/agency shall request an expedited due process hearing. This procedure may be repeated as necessary.

In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the same procedures as noted under the procedures relative to parent appeals.

A placement ordered under the preceding procedure shall not last longer than forty-five calendar days.

Section 300.527**Protections for Children Not Yet Eligible for Special Education and Related Services**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the school district/agency, including any behavior described in these procedures, may assert any of the protections provided for in these procedures under the IDEA if the school district/agency had knowledge (as determined in the following procedure) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

The school district/agency shall be deemed to have knowledge that a student is a student with a disability if the following standards are met:

- The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents his or her making a

written statement) to personnel of the school district/agency that the student is in need of special education and related services.

- The behavior or performance of the student demonstrates the need for these services in accordance with the definition of a child with a disability in the section of these procedures titled “Definitions.”
- The parent has requested an evaluation of the student to determine if he or she is a student with a disability.
- The teacher of the student, or other personnel of the school district/agency, has expressed concern about the behavior or performance of the student to the director of special education of the school district/agency or to other personnel of the school district/agency in accordance with the school district/agency’s established Child Find or special education referral system.

The school district/agency would not be deemed to have knowledge if, as a result of receiving the information in the preceding procedure, the school district/agency either conducted an evaluation under the procedures specified in State Board Regulation 43-243.1 (“Criteria for Entry into Programs of Special Education for Students with Disabilities”) and determined that the child was not a child with a disability or determined that an evaluation was not necessary and provided notice to the student’s parents of its determination in accordance with the procedures under 34 C.F.R. § 300.503, “Prior notice by the public agency; content of notice.” If the school district/agency does not have knowledge that a student is one with a disability (in accordance with the preceding procedure) prior to taking disciplinary measures against him or her, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with the following:

- If a request is made for an evaluation of a student during the time period in which the he or she is subjected to disciplinary measures under the above procedures, the evaluation shall be conducted in an expedited manner. An expedited evaluation must be conducted as soon as possible but must be completed within twenty-five calendar days of the request for the evaluation.
- Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities including suspension or expulsion.
- If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the school district/agency and information provided by the parents, the school district/agency shall provide special education and related services in accordance with state and federal regulations.

Section 300.528**Expedited Due Process Hearings**

Expedited due process hearings under these procedures shall

- result in a decision within twenty-five calendar days of the request for the hearing, unless the parents and school officials otherwise agree;
- meet the requirements for due process hearings included in the procedures in this section regarding impartial due process hearings and appeals, except that for the purposes of expedited due process hearings, the following principles shall hold:
 - ▶ The introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the hearing shall be prohibited.
 - ▶ At least two business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
 - ▶ The expedited hearing shall be conducted by a due process hearing officer who meets the qualifications included in the procedure in the section titled "Hearing Officers."
- Parents must be notified within two business days of the determination that an expedited hearing will occur.
- A written decision must be mailed to the parties within forty-five calendar days of the school district/agency's receipt of the request for the hearing, without exceptions or extensions. This timeline is in effect for hearings requested by parents or school districts/agencies.
- All procedural rules for expedited hearings are the same as for all impartial due process hearings.
- The decisions on expedited due process hearings may be appealed under the due process appeal procedures included in this section.

Section 300.529**Referral to and Action by
Law Enforcement and Judicial Authorities**

The school district/agency shall report a crime committed by a student with a disability to appropriate authorities on the same basis as for students without disabilities and shall not prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

Copies of the special education and disciplinary records of the student shall be transmitted for consideration by the appropriate authorities only to the extent that such a transmission is permitted under the Family Educational Rights and Privacy Act (FERPA). FERPA permits the disclosure of special education and disciplinary records only with the prior written consent of the parent or a student aged eighteen or older or under one of the following exceptions to the consent requirements:

- in compliance with a lawfully issued subpoena or court order if the school district/agency first makes a reasonable attempt to notify the parents of the subpoena or order or
- in connection with an emergency if the knowledge is necessary to protect the health or safety of the student or other individuals.

Documentation

All documentation required to meet state and federal regulations concerning due process procedures must be maintained on a child-by-child basis by the school district/agency legally responsible for providing a FAPE for the child.

Least Restrictive Environment

Section 300.130

Least Restrictive Environment

The state has developed the following procedures to ensure that the requirements of Sections 300.550–300.556 are met, including the provision in Section 300.551 requiring a continuum of alternative placements to meet the unique needs of each child with a disability:

- The SDE has established statewide standards and sample procedures for the least restrictive environment (LRE). These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the provision of a FAPE for students with disabilities in the LRE. School districts/agencies may implement the procedures as written, may adapt the procedures, or may develop their own procedures. In any case, all LRE procedures relative to placements of students with disabilities must be approved by the SDE and must be in compliance with all state and federal statutes and SDE standards.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding the LRE.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for the LRE as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the LRE provisions for children with disabilities served by the school districts/agencies.
- Further training or technical assistance is provided to assist school districts/agencies in correcting any areas of noncompliance.
- Follow-up monitoring is conducted as needed.
- Federal funds under the IDEA are withheld to any school district/agency not in compliance with federal and state regulations regarding the LRE as determined by the school district/agency's application under the IDEA, by monitoring, or through complaints received from constituents.

Section 300.550

General LRE Requirements

Each school district/agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

LRE decisions are made at least annually by the IEP committee during the IEP meeting subsequent to the development of the IEP. LRE decisions are based on the completed IEP.

All IEP components will be fully addressed and completed prior to determining the LRE and placement for the student. For each student with a disability, the IEP team will address the following two questions in the IEP regarding the LRE:

- Is the student to be removed from the regular educational environment? (Removal from the “regular educational environment” means that the student is in special education for more than 60 percent of the day.)
- Is the student to be placed in the school that he or she would normally attend if not disabled?

Prior to responding to the above two questions, the IEP team may review the following information relative to the student to assist its members in making their LRE decisions:

- evaluation reports,
- report of behavior/discipline problems,
- intervention reports,
- the student’s IEP, and
- referral forms.

Following the review of all relevant reports and records, the IEP team will make the LRE decisions.

The removal of a student with a disability from the regular educational environment will be based on the current IEP. “Removal” is defined as the physical separation of a student who is disabled from the regular educational environment for 60 percent of his or her instructional day. For a student who was previously removed from the regular educational environment, the IEP team will determine, at least on an annual basis during the review of the IEP, if removal may be justified based on the new IEP.

If the student is to be removed from the regular educational environment, then the LRE recommendations form will be completed by the IEP team to justify the removal, to describe how the student will participate with nondisabled students in academic, nonacademic, and extracurricular activities and to document that a continuum of

alternative placements was considered in selecting the appropriate placement for the student.

Documentation will be maintained in the student's folder that the following information was considered by the IEP team in determining the LRE:

- The effect that the nature and severity of the student's disability has on his or her educational performance as documented in evaluation data and the present levels of performance on the current IEP. If there is an effect, this fact will be documented in the student's folder.
- Consideration will be given to whether the presence of this student in the regular educational environment substantially and consistently creates a disruptive effect on the educational performance of his or her regular classroom peers. If there is a disruptive effect, this fact will be documented in the student's folder.
- Interventions that were attempted with the student during the past twelve months to accommodate him or her in the regular education environment.

The IEP team will discuss the supplementary aids and services that are reasonably calculated to confer educational benefit in the regular educational environment. If it is determined that even with supplementary aids and services the student would not derive educational benefit in the regular educational environment, the LRE recommendations form will be completed and the supplementary aids and services will be indicated in the IEP.

Section 300.551 Continuum of Alternative Placements

Each school district/agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services and that this continuum will be considered in determining the placements of students with disabilities.

All the various components of the IEP (e.g., levels of educational performance, goals, objectives) will be reviewed and considered by the IEP team in selecting the appropriate placement option for the student. In making its recommendation, the IEP team will consider each of the program options from the range of options delineated on the list below, and the recommended placement will be checked on the LRE recommendations form:

- regular class with supportive services (itinerant/resource)
- self-contained classes
- special school instruction
- hospital/homebound/home-based instruction
- community agency programs (e.g., Head Start for preschool children)
- "other"

Note: Home-based services are defined as those educational services provided to children through an IEP. This must be determined on a case-by-case basis by the IEP team, depending upon the specific circumstances. The term “medical homebound” refers to those educational services delivered to a student who cannot attend school as a result of accident, illness, or pregnancy, despite the aid of transportation. Students placed on medical homebound services for an extended period of time will require an IEP review to determine how the educational services will be delivered during the time the child is unable to attend school.

The IEP team shall document that it has considered the following locations for placement of a student who is disabled into a separate (self-contained) class. The continuum includes, but is not limited to,

- the school that the student would normally attend if he or she were not disabled,
- another regular school in the school district,
- a regular school in a neighboring school district arranged through a multidistrict agreement,
- a separate segregated facility in the school district,
- a separate segregated facility in a neighboring school district arranged through a multidistrict agreement,
- a residential facility (i.e., institution) within the state, and
- a residential facility (i.e., institution) outside of the state.

Section 300.552 Placements

In determining the educational placement of a child with a disability, including a preschool child with a disability, each school district/agency shall ensure that the placement decision is made by a group of persons, including the parents, who are knowledgeable about the child, the meaning of the evaluation data, and the placement options and shall ensure that the placement decision is made in conformity with the LRE provisions of this section and Sections 300.550–300.554.

The IEP team shall verify that the program option recommended for the student will be as close as possible to the student's home. If the IEP team bypasses an appropriate program option that is located in close proximity to the student's home for a program option that is located farther away, documentation regarding the justification will be included in the student's folder as to why the student cannot be educated closer to home.

A child with a disability shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

Supplementary aids and services shall be provided when needed by the student in order to receive a FAPE.

If any member of the IEP team has cause to suspect any potential harmful effect on the student or on the quality of services that may result from placing him or her in the program option recommended by the IEP team, this concern will be addressed. The IEP team shall document that consideration has been given to potential harmful effects and benefits of the services/placement.

Upon completion of the LRE recommendations form when appropriate, the IEP team shall attach this form to the IEP and utilize this information to justify the placement of the student into the recommended program. Documentation shall be maintained to verify that the student's placement is based on

- the completed IEP document,
- the LRE requirements of the IDEA, and
- the LRE recommendations of the IEP team.

Section 300.553 Nonacademic Placements

In providing or arranging for the provision of nonacademic and extracurricular services and activities including meals, recess periods, and the services and activities set forth in Section 300.306, each school district/agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

The IEP team will delineate academic, nonacademic, and extracurricular activities in which the student will participate with age-appropriate nondisabled students. The IEP team will consider whether there are any specific types of academic, nonacademic, or extracurricular activities—even though otherwise appropriate—that are inadvisable for the disabled student owing to medical or other conditions. If the disabled student is not to participate with nondisabled students in any academic, nonacademic, or extracurricular activity, the IEP team shall document the rationale for this decision.

Activities to be considered by the IEP team shall include, but not be limited to, the following: subject areas (e.g., reading, math, science, social studies), meals, homeroom, assemblies, health services, referral services, recreational activities, field trips, employment, clubs, study hall, special interest groups, recess, counseling, library, fine arts (e.g., music, art, drama), and athletics. For each academic, nonacademic, and extracurricular activity deemed appropriate for the student, the extent of time that the student will participate in the activity with nondisabled students will be estimated by the IEP team. Supplementary aids and services necessary to support these activities are included in the IEP.

Section 300.554**Children in Public or Private Institutions**

Except as provided in Section 300.600(d), the SDE shall ensure that Section 300.550 is effectively implemented including if necessary, making arrangements with public and private institutions such as MOAs or special implementation procedures.

Procedures for obtaining financial aid from the SDE to assist in financing a private placement must include the submission and approval of a financial aid grant application. One condition of this approval is that the school district maintains documentation that the private placement is in adherence with the SDE standards for the LRE and consistent with the approved procedures of the school district for implementing the LRE.

The SDE participates in the following interagency referral and information systems. These systems assist in the location of appropriate service providers for children with disabilities who are entering the service delivery system or whose educational needs require an alternative placement within the continuum. The following interagency systems ensure that a wide variety of placement alternatives are available for those students whose needs must be met in settings outside the traditional school district continuum:

- The Continuum of Care was established by the South Carolina General Assembly for the purpose of coordinating service delivery to severely emotionally disturbed students with needs that must be met from a variety of service providers including local education agencies.
- In July 1994, the General Assembly passed a piece of landmark legislation, known as the Interagency System of Caring for Emotionally Disturbed Children (ISCEDC). Through the establishment of multiagency partnerships in every locality, the ISCEDC initiative has forged critically needed improvements in the child welfare service delivery system by creating assessment, treatment, and funding mechanisms that transcend agency lines. A portion of the Continuum of Care was moved to the South Carolina Department of Social Services in 1996. This organizational change, which resulted in the creation of the Division of Managed Treatment Services for Children (MTS), provided an administrative vehicle for further integrating services to children in DSS custody with emotional and/or behavioral conditions. Both the custody and treatment components of the care of a child can now be coordinated through a single MTS case manager.
- The SCSIS operates a toll-free number that provides current information on where and how to obtain services for students with disabilities and their families. This information system can be accessed from any part of the state and contains comprehensive, updated computer files on services, including special education and related services, that exist in the state service delivery system.
- The Children's Case Resolution System (CCRS) was established by the South Carolina General Assembly to provide a process for reviewing cases on behalf of students with disabilities for whom the appropriate public agencies collectively have

not provided the necessary services. The SDE participates in the system as one of the agencies attempting to facilitate or recommend appropriate services and service providers for students with disabilities whose needs cannot be met in existing placements.

Section 300.555 Technical Assistance and Training Activities

The SDE carries out activities to ensure that teachers and administrators in all school districts/agencies are fully informed about their responsibilities for implementing Section 300.550 and are provided with technical assistance and training necessary to assist them in this effort. The following activities are implemented:

- Technical assistance is provided to teachers and administrators as a part of the monitoring conducted by the SDE.
- Two statewide conferences for administrators of programs for children with disabilities are conducted each year. Appropriate issues relative to the LRE are included on the programs.
- Statewide, regional, and local workshops are conducted through the year for teachers, parents, and administrators of children with disabilities. Information is provided regarding LRE issues.
- SDE publications that address the concerns and issues of the LRE are disseminated widely.
- Information from various national sources regarding LRE issues is disseminated through a newsletter, memorandums, correspondence, and the like.
- Individualized technical assistance is provided through on-site meetings, correspondence, and telephone communication.

Section 300.556 Monitoring Activities

The SDE implements the following procedures to inform each school district/agency of its responsibility for ensuring effective implementation of the LRE for children with disabilities:

- developing sample procedures consistent with federal and state regulations;
- disseminating regulations and sample procedures to all school districts/agencies with educational programs for children with disabilities;
- providing training to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings;

- providing technical assistance upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support;
- requiring all school districts/agencies that provide educational programs to children with disabilities to submit policies and procedures for the LRE as part of the school district/agency application for funds under the IDEA.
- monitoring all public agencies—by conducting student folder reviews, parent and student interviews, teacher interviews, administrator interviews, and classroom observations—to determine proper implementation of the school district/agency's procedures regarding the LRE as required by federal and state regulations;
- providing further training or technical help to agencies to assist in the correction of any areas of noncompliance;
- conducting follow-up monitoring as needed;
- withholding federal funds under the IDEA to any school district/agency not in compliance with federal and state regulations under the LRE as determined by the school district's/agency's application under the IDEA, by monitoring, or through complaints received from constituents;
- reviewing a school district's or an agency's justification for its actions in the event that such a district or agency makes placements that are inconsistent with the requirements under the LRE; and
- assisting in the planning and implementation of any necessary corrective action in the above regard.

Transition of Children from Part C to Preschool Programs

Section 300.132

Transition of Children from Part C to Preschool Programs

The policies and procedures by which local BabyNet (Part C) participating programs and school districts conduct transition activities before the third birthday of a preschool child with a disability are based on an interagency agreement among the SDE, the Department of Health and Environmental Control (the Part C lead agency of the state), the Commission for the Blind, the Department of Mental Health, the Department of Disabilities and Special Needs, the Department of Social Services, Head Start, the Department of Health and Human Services, and the School for the Deaf and Blind, in accordance with Section 59-36-50 of the Code of Laws of South Carolina.

The service coordinator for the BabyNet participating agency, as assigned on the IFSP (e.g., early intervention service coordinator, Children's Rehabilitation Services care coordinator, case manager) or designated Head Start staff, as appropriate, will inform the family about the transition that takes place at age three. This information is furnished from the time early intervention services begin and continues as the time for the transition approaches.

Six months before the child turns age three, the service coordinator secures consent from the parents to release information about the child to the school district to help determine the child's eligibility for special education services. The service coordinator refers the child to the coordinator of programs for children with disabilities in the school district or to the coordinator's designee. In order to obtain related service evaluations not performed by the referring agency, the parents will be asked by the service coordinator to sign the school district's consent form so that these evaluations can be requested directly. These consent forms are to be completed six months before the child turns three.

The service coordinator, in collaboration with the family, arranges for a meeting that is held six months before the child's third birthday but no later than ninety days prior to that birthday. Meeting confirmations shall be sent in writing to the parents, the school district representatives, and the other meeting attendees (and by telephone when possible) at least fourteen calendar days before the transition meeting is held. The purposes of the meeting are

- to provide the family with an overview of the child's program options for the period from his or her third birthday through the remainder of the school year;
- to familiarize school personnel with the child and family's needs and the services currently being provided;
- to familiarize the family with the school district's eligibility criteria;
- to describe the differences between programs and services provided through BabyNet and those provided by preschool programs for children with disabilities;

- to recommend school readiness activities for the child and identify services for which the child may be eligible through the school district; and
- to provide the school district with the child's records so that a determination can be made regarding the need for additional tests or repetition of tests based on State Board Regulation 43-243.1 ("Criteria for Entry into Programs of Special Education for Students with Disabilities"). The agencies will work cooperatively to eliminate duplication of testing when possible; this information can also be used by the school district to plan services.

School districts must evaluate a child in accordance with criteria established by the SDE and develop an IEP within timelines that allow placement to occur on the third birthday.

The coordinator of programs for children with disabilities in the school district shall invite the service coordinator and other appropriate early intervention staff to participate in the development of the IEP for children who will receive special education and related services. The IEP conference is held within thirty calendar days of the eligibility determination and before the child's third birthday. The coordinator of programs for children with disabilities in the school district will explain the parent's rights to appeal the eligibility determination.

When children turn three between the ending date of one school year and the beginning date of the subsequent school year, an evaluation must be conducted and an IEP must be developed within timelines that allow for placement to occur on the beginning date of the subsequent school year. If, however, the IEP team determines that there is a need for services, these services may be provided before the beginning of the school year. School districts must adhere to the policies and procedures established by the SDE to ensure a smooth transition from early intervention services provided to infants and toddlers to the preschool program of the school district.

Recognizing the need for more detailed policies and procedures and the need to delineate agency responsibilities, the SDE appointed a committee charged with the task of making recommendations for establishing an effective system for the transition of young children with disabilities from birth through age five and their families from one agency to another.

The South Carolina Early Childhood Transition Committee, under the joint sponsorship of the State Advisory Council on the Education of Individuals with Disabilities and the South Carolina Interagency Coordinating Council, developed the Recommendations for Establishing an Effective System for the Transition of Young Children with Disabilities and Their Families. Through a variety of awareness activities, including regional training, the recommendations were presented to BabyNet, school districts, Head Start administrative and direct service staff, and the parents of young children with disabilities. Staff members of the SDE have been providing technical assistance and resources to local transition committees to help in the development of MOAs for transitioning children from Part C to Part B programs.

Private Schools

Section 300.133

Children in Private Schools

The SDE has developed procedures to ensure that the requirements of Sections 300.400–300.403 have been met:

- Sample procedures regarding private schools have been developed and disseminated to each school district.
- Each school district serving students with disabilities must submit policies and procedures relative to private schools to the Office of Exceptional Children for review and approval.
- Training on procedures regarding private schools is provided to all school districts.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts needing additional training or support.
- Regulations and sample procedures are disseminated to all school districts with educational programs for children with disabilities.
- Training is provided to all coordinators for programs for children with disabilities in school districts through statewide and/or regional meetings.
- All school districts providing educational programs for children with disabilities are required to submit policies and procedures for private schools as part of the school district application for funds under the IDEA.
- School districts are monitored according to established procedures to ensure the effective implementation of the private school provisions for children with disabilities served by the school districts.
- Further training or technical assistance is provided to assist school districts in correcting any areas of noncompliance.
- Follow-up monitoring is conducted as needed.
- Federal funds under the IDEA are withheld to any school district not in compliance with federal and state regulations under private schools as determined by the school district's application under the IDEA, by monitoring, or through complaints received from constituents.

Children with Disabilities in Private Schools Placed or Referred by Public Agencies

Section 300.401 Responsibility of SEA

The SDE ensures that a child with a disability who is placed in or referred to a private school or facility by a school district is provided special education and related services in conformance with an IEP that meets the requirements of Sections 300.340–300.350 and that is at no cost to the parents. These children are provided an education that meets the standards that apply to education provided by the SDE and school districts and shall have all of the rights of a child with a disability who is served by a school district.

As stipulated in State Board of Education Regulation 43-243, “When it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the State. After determination has been made that neither the public schools nor another governmental agency of the State can adequately provide special education and related services, then private programs within the State (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.”

When it is clearly unfeasible to provide a FAPE for a child with a disability in a public school program, the school district may contract with other agencies or organizations, public or private, within or outside of the state, provided that proper application has been made by the school district and approved by the SDE. Children placed in such programs by the SDE/school district shall have all of the rights they would have if served by the school district, and the agency or organization must meet all of the standards applicable to the SDE/school district.

Upon the school district’s submission of a properly completed application form and any supplemental information that may be required, the director of the Office of Exceptional Children may approve the application. Approval shall be only for those applications where it is impractical and inappropriate to provide special education and related services in a public school setting consistent in accordance with an IEP.

Consistent with State Board of Education Regulation 43-243, the school district pays no more than one student’s portion of funds generated under the South Carolina Education Finance Act. The school district may also accept donations and/or utilize other funds (e.g., Title XX, CHAMPUS) to defray the cost of private school placement. Monies available under the IDEA shall be utilized to pay the remaining (if any) balance of the private school costs in accordance with the following procedure:

- Fifty percent of the outstanding balance shall be paid from the school districts allocation of IDEA funds or other funds.

- Fifty percent of the outstanding balance shall be paid from the SDE's allocation of IDEA funds.

The requirement that the child's residential program, including nonmedical care and room and board, be at no cost to the parents applies only to those placements made by the SDE/school district for educational purposes. Therefore, if a school district were to place a child with a disability in a private residential school to provide the child with an appropriate special education, the above procedures would apply.

Section 300.402 Implementation by SEA

When children with disabilities are placed in private schools by the SDE/school district, the private schools must be in compliance with the standards of the SDE/school district. Private schools located in South Carolina shall meet the standards that apply to the SDE/school district. Upon application for approval for a child with disabilities to be served by a private school within South Carolina, an on-site visit is made to the private school by a staff member of the Office of Exceptional Children to determine compliance with appropriate standards as defined in the defined program/accreditation procedures and confidentiality procedures. When the SDE/school district places a child with a disability in a private school in another state, that school must meet the standards that apply to the SDE/school district of the state in which the private school is located. In South Carolina, a staff member from the Office of Exceptional Children contacts the department of education in the state where the private school is located to request in writing an assurance from the appropriate state department of education that the private school is in compliance with the standards of the school districts in the state. Upon receipt of the assurance, the application is approved.

The SDE monitors compliance with the requirements of Section 300.401. During on-site monitoring visits to each school district, one student folder is selected as part of the monitoring sample if the school district serves a child in a private school facility. All applicable monitoring compliance items are reviewed in reference to the documentation in the folder for complete compliance with state and federal regulations. From this review, it can be determined if the IEP meets the requirements of the IDEA and if the child has all of the rights of a child with a disability who is served by a school district. The monitoring procedures include parent and student interviews. In the event a school district serves a child or children in a private school, one parent will be selected for an interview to determine that special education and related services are provided at no cost to parents.

Minimal standards for all children, including children with disabilities receiving a public education in the state, are outlined in the defined program/accreditation procedures. Specific portions of the document relate to the establishment and maintenance of programs for children with disabilities in school districts. It is this mechanism that ensures comparability among all programs operated by school districts. Private schools located within South Carolina must be in conformity with the applicable standards set

forth in the defined program/accreditation procedures if they are ultimately recipients of public funds.

In order to ensure that children with disabilities placed in private schools have all of the rights they would have if educated in a public school, the SDE shall require that the school district ensure compliance with the following requirements:

- The child must be evaluated in accordance with State Board Regulation 43-243.1, ("Criteria for Entry into Programs of Special Education for Students with Disabilities").
- The child with a disability must be accorded all of the rights afforded by the IDEA.
- The school district shall have the responsibility for the development of a written IEP that is reviewed and updated annually.
- The school district shall ensure that an appropriate representative from the private school where the child is enrolled will participate in the development and annual review of the IEP.
- The child with a disability must be educated in the LRE appropriate to implement his or her IEP.

Upon notification by the school district of its intent to place a child with a disability in a private school, the SDE shall provide to the private school, where appropriate, copies of the monitoring checklists for private schools relative to appropriate State Board of Education and the IDEA requirements, including applicable portions of the defined program/accreditation procedures and confidentiality procedures.

Private schools affected by these standards shall be afforded an opportunity to participate in the development and revision of standards relating to special education and shall be provided copies of each. The SDE shall continue to work cooperatively with private school officials to facilitate communication relative to the development/revision of SDE standards.

The CCRS (Children's Case Resolution System) is a process of reviewing cases on behalf of children for whom the appropriate public agencies collectively have not provided the necessary services. The CCRS is housed in and staffed by the Governor's Office. The purposes of the CCRS are

- to review cases of children referred to the CCRS to determine the need to facilitate or recommend services for the child, or both, and to designate the responsibilities of each school district as they relate to the children;
- to arbitrate cases where the public agencies charged with administering services to a child are unable to agree upon the services to be provided or where the proportion of the expense for the services to be paid by the agencies cannot be agreed on; and

- to collectively review the cases of children to recommend changes or improvements, or both, in the delivery of services by public agencies serving children.

Children with Disabilities Enrolled by Their Parents in Private Schools When a FAPE Is at Issue

Section 300.403 Placement of Children by Parents If a FAPE Is at Issue

A school district is not required to pay for the cost of education, including special education and related services, of a child with a disability at the private school or facility if that agency made a FAPE available to the child and the parents elected to place the child in a private school or facility. The school district, however, shall include that child in the populations whose needs are addressed consistent with Sections 300.450–300.462.

Disagreements about a FAPE

Disagreements between a parent and a school district regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of Sections 300.500–300.517.

Reimbursement for Private School Placement

If the parents of a child with a disability who previously received special education and related services under the authority of a school district enroll him or her in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the SDE and school districts.

Limitation on Reimbursement.

The cost of the reimbursement may be reduced or denied if any of the following occur:

- At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents not only neglected to inform the IEP team that they were rejecting the placement proposed by the school district to provide a FAPE for their child but also failed to state their concerns and their intent to enroll their child in a private school at public expense.

- At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in the above paragraph.
- Prior to the parents' removal of their child from the public school, the school district informed the parents—through the notice requirements described in 34 C.F.R. § 300.503, "Prior notice by the public agency; content of notice"—of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation.
- There is a judicial finding of unreasonableness with respect to actions taken by the parents.

Exception. Notwithstanding the notice requirement by the parents in this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if any of the following situations exist:

- The parent is illiterate and/or cannot write in English.
- Compliance with the paragraph above on limitation on reimbursement would likely result in physical harm or emotional trauma to the child.
- The school prevented the parent from providing the notice.
- The parents had not received notice, pursuant to Section 615 of the IDEA, of the notice requirement in the paragraph on limitation on reimbursement above.

Children with Disabilities Enrolled by Their Parents in Private Schools

As clarified in Section 300.450, "private school children with disabilities" means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under Sections 300.125 and 300.220.

Section 300.451 Child Find for Private School Children with Disabilities

Each school district shall locate, identify, and evaluate all private school children with disabilities, including children residing in the jurisdiction of the school district who attend religious schools. These children are included in the school district's Child Find activities and are described in the child identification procedures approved by the Office of Exceptional Children. The activities undertaken to carry out this responsibility for private

school children with disabilities shall be comparable to activities undertaken for children with disabilities in public schools.

Each school district shall consult with appropriate representatives of private school children with disabilities on how to carry out the Child Find activities.

Section 300.452 Provision of Services Basic Requirement

To the extent consistent with their number and location in the state, provision shall be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services in accordance with Sections 300.450–300.462.

SDE Responsibility for Services Plan

The SDE ensures that a services plan shall be developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this section.

Section 300.453 Expenditures

Formula

To meet the requirement of Section 300.452(a), each school district shall, on providing special education and related services to private school children with disabilities, spend the following amounts:

- for children ages three through twenty-one, an amount that is the same proportion of the school district's total subgrant under Section 611(g) of the IDEA as the number of private school children with disabilities ages three through twenty-one residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction ages three through twenty-one and
- for children ages three through five, an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the IDEA as the number of private school children with disabilities ages three through five residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction ages three through five.

Child Count

In deciding how to conduct the annual count of the number of children with disabilities in the state, each school district shall consult with representatives of such children who are

enrolled in private schools and shall ensure that the count is conducted on December 1 of each year. The child count must be used to determine the amount that the school district must spend in the next subsequent fiscal year on providing special education and related services to children with disabilities in private schools.

Expenditures for Child Find May Not Be Considered

Expenditures for Child Find activities described in Section 300.451 may not be considered in determining whether the school district has met the requirements related to the formula described above in this section.

Additional Services Permissible

School districts are not prohibited from providing services in excess of those required by this section.

Section 300.454 Services Determined

No Individual Right to Special Education and Related Services

No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities under Sections 300.452–300.462 shall be made in accordance with the information regarding child count and expenditures for Child Find in the previous section.

Consultation with Representatives of Private School Children with Disabilities

Each school district shall, in a timely and meaningful way, consult with appropriate representatives of private school children with disabilities in light of the funding under Section 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location in order to decide the following:

- which children will receive services under Section 300.452,
- what services will be provided,
- how and where the services will be provided, and
- how the services provided will be evaluated.

Each school district shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section. The consultation shall occur

before the school district makes any decision that affects the opportunities of private school children with disabilities to participate in services under Sections 300.452–300.462. The school district shall make the final decisions with respect to the services to be provided to eligible private school children.

Services Plan for Each Child Served under Sections 300.450–300.462

If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from a school district, the school district shall

- Initiate and conduct meetings to develop, review, and revise a services plan for the child in accordance with Section 300.455(b).
- Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

Section 300.455 Services Provided

The services provided to private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service that the child would receive if enrolled in a public school.

Services Provided in Accordance with a Services Plan

Each private school child with a disability who has been designated to receive services under Section 300.452 must have a services plan that describes the specific special education and related services that the school district will provide to him or her in light of the services that the school district has determined—through the process described above under Sections 300.453–300.454—that it will make available to private school children with disabilities. The services plan shall, to the extent appropriate,

- meet the requirements of Section 300.347 with respect to the services provided and
- be developed, reviewed, and revised consistent with Sections 300.342–300.346.

Section 300.456**Location of Services and Transportation**

Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school.

Transportation

If necessary for the child to benefit from or participate in the services provided under this section, a private school child with a disability shall be provided transportation from his or her school or home to a site other than the private school and from the service site to the private school, or to his or her home, depending on the timing of the services. School districts are not required to provide transportation from the child's home to the private school. The cost of the transportation may be included in calculating whether the school district has met the requirement of Section 300.453.

Section 300.457**Complaints****Due Process Inapplicable**

The procedures in Sections 300.504–300.515 do not apply to complaints that a school district has failed to meet the requirements of Sections 300.452–300.462, including the provision of services indicated on the child's services plan.

Due Process Applicable

The procedures in Sections 300.504–300.515 do apply to complaints that a school district has failed to meet the requirements of Section 300.451, including the requirements of Sections 300.530–300.543.

State Complaints

Complaints that the SDE or a school district has failed to meet the requirements of Sections 300.450–300.462 may be filed under the procedures in Sections 300.660–300.662 relative to the state complaint procedures.

Section 300.458**Separate Classes Prohibited**

A school district may not use funds available under Section 611 or Section 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of students if the classes are at the same site and the classes include both students enrolled in public schools and those enrolled in private schools.

Section 300.459 Requirements That Funds Not Benefit a Private School

A school district may not use funds provided under Section 611 or Section 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district shall use funds provided under Part B of the IDEA to meet the special education and related services needs of students enrolled in private schools but not to meet the needs of a private school or the general needs of the students enrolled in the private school.

Section 300.460 Use of Public School Personnel

A school district may use funds available under Sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services under Sections 300.450–300.462 for private school children with disabilities if those services are not normally provided by the private school.

Section 300.461 Use of Private School Personnel

A school district may use funds available under Section 611 or Section 619 of the IDEA to pay for the services of an employee of a private school to provide services under Sections 300.450–300.452 if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under public supervision and control.

Section 300.462 Requirements Concerning Property, Equipment, and Supplies or the Benefit of Private School Children with Disabilities

A school district must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the school district acquires with funds under Section 611 or Section 619 of the IDEA for the benefit of private school children with disabilities. The school district may place equipment and supplies in a private school for the period of time needed for the program. The school district shall ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility. The school district shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

Comprehensive System of Personnel Development

Section 300.135 Comprehensive System of Personnel Development

A comprehensive system of personnel development (CSPD), which meets the requirements for a state improvement plan relating to personnel development in Sections 653(b)(2)(B) and (c)(3)(D) of the IDEA, is in place to ensure an adequate supply of qualified special education, general education, and related services personnel. The following are the procedures the SDE has in place to show that these requirements are met.

Section 300.380 General CSPD Requirements

The SDE is committed to improving the quality of education for all of the state's children including children with disabilities. To facilitate the accomplishment of this goal, the importance of a strong, viable CSPD is recognized. The CSPD system shall ensure that public and private institutions of higher education (IHEs), agencies, organizations, associations, parents of children with disabilities, and members of the general public have an opportunity to participate and provide input into the development, review, and updating of the CSPD plan. All of the members of the CSPD Committee will meet at least two times each year with additional meetings called when necessary. A steering committee and subcommittees shall meet additionally throughout the year, as appropriate. The activities of the Committee shall be coordinated by the office director and education associates assigned to the CSPD team.

CSPD Committee

The committee shall be composed of representation from the following groups:

- State Technical and Comprehensive Education System;
- Commission on Higher Education;
- Interagency Coordinating Council (ICC) on Part C, whose representative is the chairperson of the ICC Personnel Committee;
- Department of Disabilities and Special Needs;
- Department of Mental Health;
- Head Start;
- Advisory Council on the Education of Individuals with Disabilities;
- school district/agency administrators;

- general education teachers;
- special education teachers;
- parents of children with disabilities; and
- representatives from public and private institutions of higher education.

Roles and Responsibilities

The major focus of the CSPD Committee is to survey and reassess the personnel and training needs statewide and to establish initiatives to meet the identified needs. Committee responsibilities include, but are not limited to, the following:

- to collaborate with the Part C Personnel Standards Committee to ensure coordination and continuity between the two entities;
- to collaborate with the South Carolina Center for Teacher Recruitment;
- to collaborate with the National Clearinghouse for Professions in Special Education;
- to recommend policies and procedures deemed appropriate to facilitate the accomplishment of CSPD objectives;
- to serve as a forum for communication among agencies, institutions, and organizations involved or having an interest in the delivery of special education and related services;
- to examine data as a means of recommending priorities for preservice, in-service, certification, and manpower needs;
- to identify sources for the training of personnel providing special education and related services and target populations for personnel development;
- to serve as a liaison in relaying information to appropriate officials in state government and higher education and in reporting to legislative committees;
- to make periodic reports to the State Advisory Council on the Education of Individuals with Disabilities and the State Superintendent of Education;
- to review and monitor the implementation of the CSPD plan;
- to review data and other pertinent information relative to training of the children with disabilities;
- to recommend present and future preservice training needs and provide input to IHEs relative to information/skills needed by teachers of children with disabilities;

- to determine in-service training needs statewide, identify the location of in-service training programs, and provide recommendations relative to the priorities for in-service training;
- to review certification requirements and make recommendations to the Office of Teacher Education and Certification through the director of the Office of Exceptional Children; and
- to examine data relative to the number of new personnel trained as teachers of children with disabilities in an effort to determine if present programs are producing a sufficient number of personnel to meet the state's goal for providing a full educational opportunity to students with disabilities.

Section 300.381 Adequate Supply of Qualified Personnel

The South Carolina Center for Teacher Recruitment (SCCTR) is the clearinghouse for information about the status of teaching in South Carolina. The SCCTR collects and distributes information about teacher supply and demand, the number of graduates, the areas in which initial certificates are issued, the status of minority teacher recruitment, teacher salaries, and so forth.

The Office of Exceptional Children conducts a survey in concert with IHEs (both public and private) relative to the estimated supply of new professional personnel who may be eligible for certification. The results of this survey represent the number of graduates potentially available for employment in school districts within a four-year period. Each year this figure is updated. The Office of Exceptional Children also obtains data relative to the number of available fully certified professionals and those certified with a temporary permit. The Office of Exceptional Children has also established relationships with the Developmental Disabilities Council, the Teacher Cadet Program, and the South Carolina Center for Teacher Recruitment. These associations boost our efforts in recruiting qualified professionals into the state, promoting special education as a career choice, and coordinating supply/demand information between state and local agencies.

The State Board of Education requires that school districts/agencies establish procedures to ensure that all personnel employed are adequately and appropriately trained in their respective areas of disabilities.

The CSPD Committee has developed a plan to meet the personnel needs of South Carolina. This committee is involved in ongoing training to understand their specific tasks and responsibilities. Four subcommittees are established:

- Recruitment/Retention,
- Dissemination/Adoption of Best Practices Committee,
- Preservice/Continuing Education, and
- Data Collection.

These subcommittees meet on a continual basis and have established the following goals and objectives for implementing the CSPD needs in South Carolina:

Recruitment/Retention

Goal: To design and implement a comprehensive system for recruitment of personnel (CRP) to include related services personnel and leadership personnel

Within this goal, the specific objectives are

- to identify all existing recruitment efforts in the state within higher education, professional associations, and school districts to include personnel from minority backgrounds and personnel with disabilities;
- to identify missing elements of recruitment efforts;
- to invite key contact persons to participate and develop CRP;
- to gain support for CRP;
- to implement CRP; and
- to evaluate efforts and effects of CRP on an ongoing basis.

Dissemination/Adoption of Best Practices

Goal: To develop/adopt and implement programs where children with special needs will be included effectively with students in the general curriculum

Within this goal, the specific objectives are

- to identify and contact school districts/related agencies currently practicing inclusion to determine what is working and why it works,
- to identify key players who are interested in inclusion,
- to invite key consumers to participate in process,
- to develop a state-of-the-art implementation plan for the inclusion of these children,
- to implement the plan, and
- to evaluate efforts and effects of the plan on an ongoing basis.

Preservice/Continuing Education

Goal 1: To design a CSPD for continuing education to ensure that service providers (special education, paraprofessionals, related services personnel, and leadership personnel) have knowledge, skills, and attitudes to serve students with special needs

Within this goal, the specific objectives are

- to identify continuing education opportunities currently being offered by agencies, organization, and IHEs in the state;
- to define, disseminate, and refine a set of competencies for service providers;
- to develop a training-needs assessment process based on competencies;
- to design and implement training to include personnel from minority backgrounds and personnel with disabilities; and
- to evaluate the efforts and effects of the training on an ongoing basis.

Goal 2: To focus on preservice

Goal 3: To develop and implement a continuing education credentialing process

Data Collection

Goal: To develop a streamlined data system to enable data to be efficiently collected, compiled, analyzed, maintained, and transmitted among appropriate SDE offices and between the SDE and other appropriate agencies using the Tranquility and SASI (School Administration Student Information) computerized systems within the SDE.

Within this goal, the specific objectives are

- to identify sources where pertinent data can be obtained,
- to identify a contact person in each office/agency,
- to convene contact persons who will constitute the subcommittee,
- to cross-reference and validate data services with data requirements,
- to determine most effective methods of collecting and transmitting data,
- to determine the annual date on which the data will be collected,
- to conduct periodic meetings to develop written policies and procedures for data collection and management,
- to implement data collection, and
- to evaluate the effectiveness of the data-collection system.

Section 300.382

Improvement Strategies

The following is a summary of the state's legislation relative to school districts that has provided funding to strengthen the teaching profession:

- Education Finance Act (1977): The intent of this legislation was to improve the formula of state aid to local school districts by equitably distributing funds according to the local ability to pay taxes. While the reform was an improvement over previous policy, large equity gaps continued to exist in public education funding throughout the state.
- Basic Skills Assessment Program (1978): This statute responded to public demand for a way to ensure that students graduating from high school possessed certain skills in reading, math, and writing.
- Educator Improvement Act (Act 187, 1979): This legislation brought about higher standards for entry into college teacher preparation programs and a focus on teacher evaluation.
- Education Improvement Act (1984): Heralded at the time as the most dramatic and comprehensive education reform in the history of the state, this legislation was designed to begin reversing the effects of segregation that denied appropriate and equal education opportunities for all students. The Education Improvement Act contained seven major initiatives:
 - ▶ to raise the level of student performance;
 - ▶ to strengthen the teaching of basic skills;
 - ▶ to elevate the teaching profession;
 - ▶ to improve leadership, management and fiscal efficiency;
 - ▶ to implement quality controls and reward productivity;
 - ▶ to create effective partnerships with parents, communities, and businesses; and
 - ▶ to provide adequate school buildings.
- Target 2000—School Reform for the Next Decade Act (1989): A provision of this program included financial support for dropout prevention. This initiative is intended to increase graduation rates in the state, which are still unacceptably low.
- Early Childhood Development and Academic Assistance Act (Act 135, 1993): This legislation offers substantial financial support for the education of students ages four and five. The three-year phase-in of full-day kindergarten programs for all students in the state was completed in 1998–99.

- School-to-Work Transition Act (1994): This legislation supports federal efforts to improve the work force in the United States. It addresses the educational needs of students not planning to attend colleges or universities and responds to demands of the private sector by implementing a more rigorous curriculum for all students.
- ADEPT (Assisting, Developing, and Evaluating Professional Teaching, 1997): This evaluation system for student teachers and practicing classroom teachers was fully implemented during the 1998–99 school year. The process is results-based and incorporates peer assistance.

Improvement strategies include the following:

- Each year the SDE, Office of Exceptional Children, identifies continuing education needs in order to provide assistance to teachers, administrators, and related services personnel in resolving problems relative to program development and implementation of programs for children with disabilities. The SDE ensures that incentives are offered as a means of encouraging participation in staff development activities. These incentives may include release time, stipends, recertification credit, or graduate credit.
- The SDE ensures that ongoing in-service training programs are available to all personnel engaged in the education of children with disabilities. Local staff involvement is ensured through provisions of the South Carolina Education Finance Act (EFA) and the Education Improvement Act (EIA).
- Section 59-20-60(7)(e) of the EFA stipulates the following: "Each school district board of trustees shall . . . provide a program for staff development for all educational personnel. A portion of the funds in the foundation program must be used for this staff development that may include, but not be limited to: (1) college courses in education, subject area of certification or management; (2) teaching center offerings; (3) State Department of Education workshops; and (4) district-wide or in-school training for the purpose of fostering professional growth or improving the competency of all educational personnel."
- South Carolina law requires that "The State Department of Education . . . provide recommendations and assist districts in conducting in-service training programs for teachers based on the findings and research it derives from the study of effective schools and classrooms and from district plans developed in accordance with Section 59-139-10" (S.C. Code Ann. § 59-3-90). Under state law, "all school district and state agency school employees required by the State Board of Education to hold State Board of Education certification are eligible for tuition reimbursement at a rate consistent with that charged at public colleges and universities every two years for successful completion of a three-hour credit course in their field of specialization at a South Carolina public or private college, so long as they work in that field in a South Carolina public school or state agency school for the succeeding year" (S.C. Code Ann. § 59-21-150).

- The Target 2000 Act provides that the SDE “shall develop or select in-service training programs for teachers and staff in teaching higher order thinking and problem solving as part of the existing curriculum” (S.C. Code Ann. § 59-29-183).
- The South Carolina Grant for Improving Teacher Quality addresses the need to transition teachers to a standards-based education system. The grant addresses the state’s teacher quality gaps and calls for a system to allow the state to produce and maintain quality teachers. The grant establishes the Governor’s School for Excellence in Teaching.
- Seven school districts are participating in a pilot study of the feasibility of establishing significant developmental delay as a categorical option for special education and related services for students ages six through eight. The results of this two-year research project will determine the ages that the state will use in this category.
- South Carolina participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement, which permits reciprocity for experienced teachers and administrators who relocate to a member state and seek teacher certification there.
- Every school district in the state has been provided additional days for professional development as well as additional state funding for this purpose. In-service training in the form of conferences, seminars, and course work is conducted for teachers by their school districts and by the Office of Exceptional Children.
- A staff member from the Office of Exceptional Children participates on the three committees that address CSPD issues for Part C of the IDEA: the personnel committee, the training committee, and the council of disciplines. This staff member disseminates information about training and course work provided by Part C to Head Starts and school districts. Additionally, the staff member participates in Part C training as a facilitator or trainer. Funding may be made available to assist in the Part C training by the Office of Exceptional Children. The director of the Interagency Coordinating Council for Part C and the project administrator for the Part C lead agency are members of the Advisory Council on the Education of Individuals with Disabilities. Other agencies serving preschool children with disabilities are also represented on the Advisory Council.
- South Carolina First Steps to School Readiness (First Steps), which became state law on June 28, 1999, is a statewide early childhood education initiative designed to ensure that the state’s children will arrive in the first grade healthy and ready to succeed. The Office of Exceptional Children collaborates with First Steps by sharing information regarding the needs of young children with disabilities and by developing documents that may be required. The Office of Exceptional Children is working with the SDE’s Office of Early Childhood to develop a needs assessment instrument for First Steps. Under way are collaborative efforts concerning early literacy that will

involve the Office of Exceptional Children, the Office of Early Childhood, and First Steps.

- Funds were made available to South Carolina under the IDEA to be utilized for providing capacity building grants to local school districts. These grants are designed to assist in providing direct services and in making systemic changes with the goal of improving results for children with disabilities. Funds can be utilized by districts to provide direct services that include initiatives such as transitioning students with disabilities into the general curriculum and providing alternative programming for children with disabilities who have been expelled. The monies may also be utilized to adopt promising practices, materials, and/or technology that are aligned with the state standards for students with disabilities.
- The SDE's Office of Exceptional Children assesses/reviews personnel development needs through agency applications under the IDEA. These documents must be submitted by each school district/agency to the Office of Exceptional Children for approval.
- School districts/agencies are required to provide the following information in their applications:

Part I. Narrative

- ▶ a description of the school district/agency's procedures for conducting a needs assessment relative to in-service training;
- ▶ the needed areas of training in priority order;
- ▶ the target populations requiring in-service training (such as special teachers, general teachers, administrators, and support personnel) in priority order;
- ▶ a description of the school district/agency's system for dissemination of significant information and promising practices derived from educational research and demonstration projects;
- ▶ a description of procedures utilized to evaluate in-service programs and a copy of the evaluation instrument(s); and
- ▶ additional information in support of the school district/agency's in-service training program.

Part II. Data

Each application from a school district/agency must address personnel development procedures including procedures, priority areas, target populations, and procedures to evaluate in-service programs. This information is compiled into an annual report on the in-service needs of the state. The report is submitted to the CSPD Committee for identification of priority in-service needs annually. The committee reviews the

data relative to the location and availability. The SDE's Office of Exceptional Children attempts to fulfill those needs not being addressed by school districts/agencies and other organizations.

- A collaborative effort among the SDE, First Steps, Part C, and Head Start will ensure that professionals and paraprofessionals have the content knowledge and the skills needed to meet the needs of infants and toddlers with disabilities.
- The Office of Exceptional Children works with all institutions of higher education and other entities that prepare personnel who work with children with disabilities on both a preservice and in-service basis to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet state and local needs. Representatives of institutions of higher education attend all of the conferences and training programs provided by the Office of Exceptional Children and the SDE. All guidance documents are disseminated to these IHEs.
- The SDE's Office of Professional Development provides training programs to school district personnel, including special education personnel, to enable them to gain knowledge in content areas and to obtain recertification credit.
- The SDE operates a Web site that includes information of interest to school district personnel and parents regarding teacher certification requirements, training programs, and a variety of information useful to the general public.
- Three years ago, the Office of Exceptional Children initiated a pilot program to implement RAPS Discipline (Rational Approaches to Practical School Discipline) in twelve schools in the state, with the goal of providing quality education for the students. The results in those schools have been remarkable. Suspensions and referrals out of the classroom have been drastically reduced. Referrals to programs of special education for behavior issues have been reduced. RAPS Discipline is a proven program that guides schools in developing an effective method of discipline management. The program provides a systematic, consistent, and predictable approach to discipline management that creates a school culture where everyone feels safe and respected and learning accelerates. The RAPS Discipline program provides a school with the following:
 - ▶ development of a unified philosophy of discipline that provides for a positive educational climate and the encouragement of measurable social growth of all students;
 - ▶ information about the legal issues surrounding school discipline practices that reduces the fears about litigation;
 - ▶ establishment of a schoolwide discipline management system under the guidance of a RAPS Discipline trainer, enabling staff to learn to analyze and

- interpret their school's data in order to understand their school's unique discipline profile;
- ▶ a review of data that promotes effective and timely decisions on managing student social behavior;
 - ▶ an extensive knowledge base of effective school discipline practices that can be adapted for any urban or rural school setting;
 - ▶ a reduction in classroom disruptions, an increase in instructional time, and a decrease in staff frustration and burnout;
 - ▶ information to enable school staff to examine and confront stereotypes and myths about race, socioeconomic status, and gender as these elements relate to disciplinary measures; and
 - ▶ strategies to enable the school to achieve consistency in discipline rules, consequences, and expectations.

Dissemination of Significant Information

- The Office of Exceptional Children subscribes to various professional journals and is on mailing lists for newsletters and projects for educational research and demonstration. Significant information derived from educational research, demonstration projects, and other projects is systematically forwarded to appropriate education associates within the Office of Exceptional Children and the Office of Curriculum and Standards for review. If the information is significant, recommendations are made for dissemination to school districts/agencies and other organizations. School districts/agencies and other organizations frequently send information to the Office of Exceptional Children for consideration for statewide dissemination.
- Child Find information is disseminated through public awareness campaigns in cooperation with commercial and public radio and television networks.
- The Office of Exceptional Children develops a yearly report titled *Data Report of Programs for Exceptional Children*, which is disseminated to superintendents, district coordinators, chief administrative officers in state agencies, IHE personnel, Head Start directors, and other advocacy and parent groups.
- The *Administrators' Guide to Programs for Exceptional Children* is developed by the Office of Exceptional Children and provided to all school district/agency coordinators of programs for children with disabilities. This publication is also disseminated annually during the conference for newly appointed coordinators of programs for children with disabilities.

- The Office of Exceptional Children has disseminated revised guidance documents in the areas of child find, the IEP/LRE, due process, parental rights, confidentiality, and surrogate parents to school districts/agencies. The documents were designed to provide school districts/agencies with standards, sample procedures, and sample forms that may be utilized to meet the requirements and standards.
- *A Parents' Guide to Special Education Services in South Carolina* has been developed by the Office of Exceptional Children and disseminated to parents through a series of workshops presented by PRO-Parents, the state's technical assistance organization, funded in part by the Office of Special Education Programs. The document has also been disseminated to school districts/agencies and to parents who contacted the Office of Exceptional Children for general information. Parents are also invited to attend the training programs sponsored by the Office of Exceptional Children.
- The SDE has both purchased and produced a number of videotapes that are made available to district personnel upon request. A series of videotaped, in-service training films focus upon the requirements of Section 504, the conduct of due process hearings, discipline, and inclusion. A video course on teaching sign language was developed by the Office of Exceptional Children and offered for credit via ITV.
- The SDE publishes a quarterly newsletter that includes relevant national, state, and local initiatives, educational research, promising practices, materials, and technology regarding the education of children with disabilities. These newsletters are disseminated statewide to teachers, administrators, related service personnel, other state agencies, parents, advocacy groups, legislators, and other constituents.

Adoption of Promising Practices, Materials, and Technology

- The SDE performs a number of activities relative to the assessment and adoption of promising educational practices. Many of the activities are performed exclusively by the SDE, some with the SDE's serving a catalytic function only, and some through consortia efforts with other federally funded programs (e.g., the Regional Resource Center, the Developmental Disability Services Act, the technical assistance programs of the IHEs, both in-state and outside South Carolina, the National Association of State Directors of Special Education (NASDSE)).
- Speakers with expertise on topical issues are brought together to participate in conferences that address current research and technical programmatic information pertinent to a specific topical area. At this awareness level, administrators are generally the target audience.
- Following such a conference, a task force is often appointed to study the issues that emerge. The task force usually consists of administrators and instructional personnel

in the designated topical areas. Needs are identified and prioritized. The task force then recommends the appropriate program, method, and so on.

- If a pilot study of the program/method or the like is deemed necessary, school districts/agencies are selected. During this phase, persons in the districts selected are provided training. On-site consultation visits are often made during the pilot study. At the conclusion of this phase, the program/method and other components of the program are evaluated and either rejected or selected for statewide implementation. If a program or a component is selected for replication, personnel from the pilot districts are trained to provide the appropriate instruction to personnel in other school districts/agencies.
- Procedures for adopting specialized materials generally consist of a review of the materials by education associates in the Office of Exceptional Children. In some cases, the materials are recommended for statewide use. In other cases, committees of school district/agency instructional personnel and administrators are convened to examine the materials and make recommendations for statewide usage.
- The SDE encourages the use of innovative practices by school districts/agencies through the following mechanisms:

School Grants

The EIA requires that the SDE "establish a competitive grant program whereby schools may be awarded grants to implement exemplary and innovative programs."

Target 2000

Under the Target 2000—Reform for the Next Decade legislation, schools with demonstrated student performance gains and accreditation standards over a three-year period are permitted to experiment with such variables as class scheduling, class structure, and staffing.

Personnel Standards

Section 300.136

Personnel Standards

The SDE ensures that the personnel providing special education and related services are adequately prepared and trained through various mechanisms such as the CSPD Committee. The responsibilities of the CSPD Committee include

- determining preservice training needs,
- establishing priorities,
- recommending initiatives, and
- collaborating with IHEs to provide the skills and training necessary for graduating effective teachers and related services personnel.

The SDE requires school district administrators and instructional personnel to be certified. Personnel providing related services whose profession/discipline is not regulated by State Board of Education certification are required to meet the highest standard of their regulating bodies (see the “Highest Entry Level” chart, below).

Personnel providing special education and related services in the state’s public school system are credentialed in accordance with the state’s highest standard.

Temporary Certificates

A temporary certificate is valid for a period of one year and can be renewed twice, provided evidence is submitted in the form of course work or required test scores that progress is being made toward full certification. Once requirements have been met, the teacher may apply for a professional certificate. It is necessary to maintain these certificates in order to allow teachers from other states who relocate in South Carolina to be employed while working to become fully certified. These certificates are also necessary to allow teachers within the state the flexibility to change to another discipline while remaining full-time employees.

Speech and Language

Speech-language therapists who hold a bachelor’s degree can be certified by the SDE. The Board of Examiners in Speech-Language Pathology and Audiology—which operates under the administration of the South Carolina Department of Labor, Licensing, and Regulation—requires that speech-language pathologists hold a master’s degree.

The following timelines have been established to meet the standards for the highest-qualified provider for speech-language personnel:

- By January 1, 2015, all persons providing speech-language services in South Carolina will have a minimum of a master's degree in speech-language pathology.
- By December 2000, the Office of Exceptional Children, in collaboration with the Office of Curriculum and Standards and the Office of Teacher Education and Certification, will develop new certification standards and continuing education criteria. Additionally, these efforts will be coordinated with representatives of institutions of higher education to ensure that appropriate continuing education opportunities are available.
- By December 2002, the new certification standards and continuing education criteria will be presented to the State Board of Education for review and approval. Following this approval, the plan will be submitted to the South Carolina General Assembly for their review and approval.
- By December 2003, a notification process will be established to inform all persons currently possessing speech-language certification of the new requirements. The continuing education plan will be implemented.

Upon approval of the policies and procedures, all speech-language therapists will be notified of the timelines and the plan for the implementation of the standards for the highest qualified provider.

Psychology

Relative to the highest standard for school psychologists, the practice of school psychology in the public schools of South Carolina differs from the private practice of psychology in this state in a number of ways. In the school setting, the school psychologist functions as a member of a multidisciplinary team of professionals. Much of a school psychologist's practice involves conducting psycho-educational evaluations. This information is utilized along with test results, observations, and reports from other educators and parents to describe a student's strengths and weaknesses and to determine and plan an appropriate educational program for the student. The emphasis in this process is on the team. Just as no one measure can be used to determine a student's placement, no single professional can make these determinations alone. Within the school setting, the team concept that includes the parents and the student, if appropriate, serves as a protection of the student's rights. Parental consent is required before a school psychologist can single out a child for evaluation or other purposes in the schools. If the parent does not consent to the action proposed, then the school district/agency could pursue this via a due process hearing. Ultimately, there are many more protections available within the school setting that would guard against the malpractice of school psychological services than in the private sector.

Another major variable involves the severity and nature of the individual student's problem. The school psychologist within the school setting does not usually become

involved in the long-range treatment of a student with severe psychological problems. In many of these cases, the student is provided services by organizations outside the school and by professionals with specialized training in their particular area of need. The school psychologist within the school setting is ethically responsible for ensuring that he or she is not practicing in an area for which he or she is not qualified.

The licensure law regulates the private practice of psychology in the state. Licensed psychologists practice independently after one year of supervised experience. Unlike the team approach mandated in the school setting, psychologists in private practice function autonomously. The safeguards that are built into the delivery of psychological services in a school setting are not present in the private sector. Therefore, it is our contention that school psychologists certified by the State Board of Education hold the appropriate credential.

SDE Certified Personnel

Through the Office of Teacher Education and Certification, the SDE issues certificates to personnel representing the following professions/disciplines who provide special education/related services:

- teachers of students with learning disabilities,
- teachers of students with visual impairments,
- teachers of students with emotional disabilities,
- teachers of students with educable mental disabilities,
- teachers of students with trainable mental disabilities,
- teachers of students with hearing impairments,
- teachers of students with orthopedic disabilities,
- teachers of generic special education,
- speech-language therapists,
- physical education teachers,
- vocational education teachers,
- social workers,
- guidance counselors, and
- school supervisors/administrators.

Licensed Professionals

The SDE does not issue certificates to personnel representing the disciplines listed below. These professionals are governed through licensure by their respective State Board of Examiners:

- audiologists,
- school nurses,
- physical therapists, and
- occupational therapists.

Other Professionals

The SDE does not certificate nor does the state of South Carolina license orientation and mobility instructors. The required credential for orientation and mobility instructors is certification by the National Association for Education and Rehabilitation of the Blind and Visually Impaired.

Paraprofessionals

Paraprofessionals are support staff and are not directly responsible for the provision of special education and related services under Part B of the IDEA in South Carolina. In this state, paraprofessionals and classroom assistants work under the direction of and are supervised by the classroom teacher. South Carolina requires that paraprofessionals receive training, and this training is a priority in the state's CSPD plan. Additionally, LEAs are required to include training for paraprofessionals in their district CSPD plans and to ensure that paraprofessionals working in classrooms for students with disabilities receive training.

Highest Requirements of the State

The following chart displays the highest entry-level requirements and authority for each discipline. Further explanation of entry-level requirements for State Board of Education certification is provided in State Board of Education Regulations 43-50 through 43-64. This information remains on file in the Office of Exceptional Children.

HIGHEST ENTRY LEVEL		
Personnel	Requirements	Authorization
Teachers of learning disabled	State Board of Education certification	Direct delivery of instruction
Teachers of visually impaired	State Board of Education certification	Direct delivery of instruction
Teachers of emotionally disabled	State Board of Education certification	Direct delivery of instruction
Teachers of trainable mentally disabled	State Board of Education certification	Direct delivery of instruction
Teachers of hearing disabled	State Board of Education certification	Direct delivery of Instruction
Teachers of orthopedically disabled	State Board of Education certification	Direct delivery of instruction
Teachers of general special education	State Board of Education certification	Direct delivery of instruction
Speech-language therapists*	State Board of Education certification	Direct delivery of instruction
Guidance counselors	State Board of Education certification	Educational assessment student counseling
Supervisors/ administrators	State Board of Education certification	Instructional and administrative responsibilities related to programs for the disabled
Audiologists	State Board of Examiners in Audiology license	Evaluation and educational programming for hearing disabled students
Nurses	State Board of Health Nurses for South Carolina	Vision and hearing screening, administering physician-prescribed medication, developing health care plans, performing medical procedures that enable students to remain in school (e.g., catheterization)
Orientation/mobility instructors	National Association for Education and Rehabilitation of the Blind and Visually	Provision of orientation/ mobility training

HIGHEST ENTRY LEVEL		
Personnel	Requirements	Authorization
	Impaired	
Social workers	State Board of Education certification	Case coordination
Physical education teachers	State Board of Education certification	Direct delivery of instruction
Vocational education teachers	State Board of Education certification	Direct delivery of instruction
School psychologists	State Board of Education certification	Educational evaluation and programming, provision of psychological counseling services
Occupational therapists	State Board of Examiners in Occupational Therapy license	Provision of occupational therapy
Physical therapists	State Board of Examiners in Physical Therapy license	Provision of physical therapy
General education teacher	State Board of Education certification	Direct delivery of instruction
Teacher aides	High school diploma or state equivalency certificate	Assistance with delivery of special education and related services

* By January 1, 2015, all persons providing speech-language services in South Carolina will have a minimum of a master's degree in speech-language pathology.

Performance Goals and Indicators

Section 300.137

Performance Goals and Indicators

The performance goals and indicators for the state were finalized November 5, 1999, for students with disabilities in South Carolina.

The performance goals and indicators include three goals that address Section 300.137:

1. to promote and support the preparation, recruitment, and retention of personnel who provide high-quality education;
2. to prepare students at all levels to meet challenging standards and to be successful in postsecondary education, employment, and independent living; and
3. to ensure the provision of an educational system that promotes learning for all students.

These goals are consistent with the goals and standards for all students in the state.

Indicators developed to address the performance of students with disabilities on dropout rates and graduation rates are included in goal 2:

- 2.1A The percentage of students with disabilities graduating from high school with a state diploma will increase.
- 2.1B The percentage of students with disabilities who drop out of school will decrease.
- 2.4 The retention rate of students with disabilities who follow regular promotion standards will decrease.
- 2.5 The percentage of students with disabilities participating in postsecondary education will increase.

Indicators developed to address the performance of students with disabilities on assessments are included in goal 3:

- 3.1 The percentage of students with disabilities participating in the statewide assessment program will increase.
- 3.4 The percentage of students with disabilities who participate in the general curriculum more than 50 percent of their day within the general classroom will increase.

- 3.9B The number of children with disabilities ages three to five entering a regular first grade will increase.
- 3.9C The number of children with disabilities ages three to five transitioning into an inclusive public school setting will increase.

The state will report every two years to the U.S. Department of Education's Secretary of Education and to the public on the progress of the state, and students with disabilities in the state, toward meeting the state's performance goals and indicators. A biennial report was submitted to the U.S. Department of Education in December 1999.

The state will revise its state improvement plan, as required, to improve the performance of students with disabilities in South Carolina.

Participation in Assessments

Section 300.138

Participation in Assessments

The SDE ensures that children with disabilities are included in general statewide and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary.

- The SDE has established statewide standards and sample procedures for IEPs that provide procedures for including children with disabilities in statewide and districtwide assessment. These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of all requirements of Part B of the IDEA.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding the inclusion of children with disabilities in statewide and districtwide assessment programs.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for IEPs that include procedures for the inclusion of children with disabilities in statewide and districtwide assessments as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the provisions for the inclusion of children with disabilities served by the agencies in statewide and districtwide assessments.
- Further training or technical assistance is provided to assist agencies in correcting any areas of noncompliance.
- Follow-up monitoring is conducted, as warranted.
- The SDE requires compliance by all public agencies with regard to all provisions set forth in the IDEA.

In an effort to meet the requirements in the IDEA that an alternate assessment be in place for those students for whom the statewide assessment is inappropriate, even with accommodations, and that guidelines for the participation of students with disabilities in the alternate assessment be developed, the following steps have been taken:

- A steering committee consisting of parents, teachers (both general and special education), test coordinators, school psychologists, higher education personnel, and curriculum coordinators was established for the purpose of refining the guiding principles and eligibility criteria that were developed by a core team of SDE staff members.
- Based on the recommendation of the steering committee, it was determined that the alternate assessment would be linked to the general education standards and assessment. Consequently, a group of teachers and parents met and developed extensions and adaptations of the state's curriculum standards that were to be utilized as the basis for the alternate assessment.
- It was determined that the extensions and adaptations would be utilized as the basis for the alternate assessment. On March 8, 1999, a copy of the guiding principles, the draft participation criteria, and the document developed by the committee was entitled *South Carolina Curriculum Standards Extensions and Adaptations* and was disseminated to solicit comments and recommendations prior to the issuance of a request for proposal for the development of an alternate assessment.
- Revisions were made as a result of the input that the SDE received, and a contract was awarded for the development of the assessment. On November 10, 1999, the document *Participation Criteria for Students in the Alternate Assessment Program* was presented to the State Board of Education as information.
- A copy of the *Participation Criteria* was disseminated to county and district superintendents, coordinators of programs for exceptional children, and other state-operated programs on December 9, 1999, to provide ample time for them to review and become familiar with the information prior to the time for annual IEP reviews. At that time the criteria will be utilized to determine if a student will take the statewide assessment or the alternate assessment.

To the extent possible, all students with disabilities are expected to be taught according to the state's standards and to graduate with a state high school diploma. Most students with disabilities will participate in the regular state testing program, with accommodations as needed. Some students with disabilities for whom this testing program is inappropriate will need to participate in the alternate assessment program. The criteria for eligibility in alternate assessment program are the following:

- The student must have a current IEP and documentation to support the fact that he or she
 - ▶ demonstrates cognitive ability and adaptive skills that prevent completion of the state-approved standards, even with accommodations;
 - ▶ has current adaptive skills requiring extensive direct instruction in multiple settings to accomplish the application and transfer of skills necessary for functional application in school, work, home, and community environments; and
 - ▶ is unable to apply or use academic skills in natural settings when taught solely or primarily through school-based instruction.
- If a student is fourteen years of age or older, the IEP team must also demonstrate that he or she
 - ▶ is unable to complete a state-approved high school diploma program even with extended learning opportunities and/or accommodations and
 - ▶ is unable to acquire, maintain, or generalize skills and to demonstrate performance without intensive, frequent, and individualized community-based instruction.
- The following criteria apply for all students:
 - ▶ Members of the IEP team must agree that the student is eligible for the state's alternate assessment program and should be excluded from the regular state assessment.
 - ▶ The inability to complete the state standards is not the result of excessive or extended absences or social, cultural, and economic differences.
 - ▶ Participation in the state's alternate assessment program is documented annually in the IEP.

Section 300.139 Reports Relating to Assessments

The SDE shall make available to the public, and shall report to the public with the same frequency and in the same detail as it reports on the assessment of children without disabilities, the following information:

- the number of children with disabilities participating in regular assessment and in alternate assessments and

- the performance results of these children, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children on regular assessments and on alternate assessments not later than July 1, 2000.

Combined Reports

Reports to the public shall include aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities.

Timeline for Disaggregation of Data

Data relating to the performance of children on assessments have been aggregated and disaggregated in the state since the early 1980s through paper reports.

SEA Responsibility for General Supervision

Section 300.141

SEA Responsibility for General Supervision

Consistent with the IDEA, the SDE shall be responsible for all education programs for students with disabilities in the state consistent with and as defined by the IDEA. In accordance with S.C. Code Ann. § 59-36-20, “all public education programs for children with disabilities within the State, including all programs administered by any other state or local agency, are under the general supervision of the persons responsible for education programs for children with disabilities in the State Department of Education and must meet the standards of the State Board of Education.”

Section 300.600

Responsibility for All Educational Programs

The term “responsibility” shall mean that the SDE shall ensure that all public agencies providing special education and related services for students with disabilities shall be in compliance with federal regulations promulgated under the authority of the IDEA. Each educational agency program for children with disabilities administered within the state, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the SDE. As the IDEA and the regulations specify that the state shall ensure a FAPE for all students with disabilities, the SDE does not assume financial responsibility for all such programs operated in the state.

Compliance and responsibility are achieved through the following mechanisms:

- The SDE requires that all programs shall develop policies and procedures, which must be approved by the Department, to ensure that qualitative programs are maintained. All agency programs are monitored consistent with the Monitoring Manual for Determining Compliance with the Individuals with Disabilities Education Act.
- The SDE monitors all agencies and programs operated by public agencies to ensure compliance with the requirements of the IDEA.
- The SDE includes public agencies as recipients of dissemination activities relative to requirements of the IDEA.
- Representatives of all public agencies are invited to attend conferences conducted by the SDE with reference to the improvement of promising pedagogical and administrative practices.
- The SDE requires compliance by all public agencies with regard to all provisions set forth in the IDEA.

The IDEA shall not be construed to limit the responsibility of agencies other than educational agencies in a state from providing or paying for some or all of the costs of a FAPE to be provided for students with disabilities in South Carolina.

The SDE has responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

Methods of Ensuring Services

Section 300.142

Methods of Ensuring Services

MOAs have been developed between each noneducational public agency and the SDE for the purpose of setting forth and delineating responsibilities for service delivery. Procedures for the development of interagency agreements between the SDE and other public agencies ensure that the agreements will

- define the financial responsibility of each agency for providing a FAPE to children and youth with disabilities and
- include a mechanism for resolving interagency disputes that addresses procedures under which school districts may initiate proceedings to secure reimbursement from other agencies or otherwise implement the provisions of the agreement.

Representatives of the SDE recently reviewed the areas of service delivery to students with disabilities that are shared with other public agencies in an effort to determine the need for additional interagency agreements or the revision of current agreements based on the identified needs for delineation of working relationships with any public agency. MOAs were revised and have either been completed and signed or are in the process of approval. The following agencies were included in this initiative:

- Department of Disabilities and Special Needs,
- Commission for the Blind,
- School for the Deaf and Blind,
- Department of Health and Environmental Control,
- Department of Mental Health,
- Department of Social Services,
- Department of Vocational Rehabilitation, and
- Department of Health and Human Services.

The SDE continues participation on interagency councils that are designed to facilitate the joint planning of the development of services to children and youth and/or the resolution of disputes concerning agency responsibility for their care:

- Children's Case Resolution System,
- Interagency Coordinating Council for Part C,
- Developmental Disabilities Council,
- Coordinating Council on Maternal, Infant, and Child Health,

- Vision Services Team,
- Alliance of Organizations Who Service the Deaf and Hard of Hearing,
- Legislative Committee on Mental Health and Mental Retardation,
- Commission for the Blind's Consumer Advisory Committee, and
- Interagency System for Caring for Emotionally Disturbed Children (ISCEDC).

Multiagency agreements are reached through the forums of these interagency groups concerning state policy development, long-range planning of service delivery systems, and in select cases, financial responsibility for the placement of students whose needs cannot be met in the existing service delivery system. These agreements augment formal MOAs that exist among public agencies in South Carolina.

The CCRS, created by legislation in 1986, functions as an interagency mechanism for reviewing cases on behalf of children from whom the appropriate public agencies collectively have not provided the necessary services. The purposes of CCRS are

- to review cases of children referred to the system to determine the need to facilitate and/or recommend services for children;
- to designate the responsibilities of each public agency as they relate to the children;
- to arbitrate cases where the public agencies charged with administering services to a child are unable to agree on the services to be provided or where the proportion of the expense for the services to be paid by the agencies cannot be agreed on;
- to collectively review the cases of children to recommend changes or improvements, or both, in the delivery of services by public agencies serving children; and
- to initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

Noneducational public agencies may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If a public agency other than an educational agency fails to provide or pay for the special education and needed related services, the school district/agency responsible for developing the child's IEP shall provide or pay for these services to him or her in a timely manner. The school district/agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency shall reimburse the school district/agency.

Children with Disabilities Who Are Covered by Public Insurance

A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for required services to enable the child to

receive a FAPE. With regard to services required to provide a FAPE to an eligible child, the public agency may not

- require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of the IDEA;
- require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided, but may pay the cost that the parent otherwise would be required to pay as described below in the section regarding children with disabilities who are covered by private insurance and the use of Part B funds; or
- use a child's benefits under a public insurance program if that use would
 - ▶ decrease available lifetime coverage or any other insured benefit;
 - ▶ result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
 - ▶ increase premiums or lead to the discontinuation of insurance; or
 - ▶ risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

Children with Disabilities Who Are Covered by Private Insurance

With regard to services required to provide a FAPE to an eligible child, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with Section 300.500(b)(1). Each time the public agency proposes to access the parent's private insurance proceeds, it must

- obtain parent consent in accordance with the above paragraph and
- inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Use of Part B Funds

If a school district/agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service, in order to ensure a FAPE the school district/agency may use its Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the school district/agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use their own insurance (e.g., deductible, co-pay).

Proceeds from Public or Private Insurance

Proceeds from public or private insurance will not be treated as program income for purposes of 34 C.F.R. § 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services, those funds will not be considered “state or local” funds for purposes of the maintenance of effort provisions in Sections 300.154–300.231.

Construction

Nothing in this section may be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program.

SEA Implementation of Safeguards

Section 300.143

SEA Implementation of Safeguards

Children with disabilities and their parents shall be afforded the procedural safeguards identified in the IDEA. The following are the procedures used by the SDE in monitoring and evaluating those programs:

- The SDE has established statewide standards and sample procedures for procedural safeguards. These standards and sample procedures are intended to ensure consistency throughout the state in both the local development and SDE monitoring of school district/agency procedures relative to the implementation of procedural safeguard requirements.
- Regulations and sample procedures are disseminated to all school districts/agencies with educational programs for children with disabilities.
- Training is provided to all school district/agency coordinators for programs for children with disabilities through statewide and/or regional meetings.
- Technical assistance is provided upon request—or when deemed necessary on the basis of complaints, the results of monitoring, and so forth—to school districts/agencies needing additional training or support regarding procedural safeguards.
- All school districts/agencies providing educational programs for children with disabilities are required to submit policies and procedures for procedural safeguards as part of the school district/agency application for funds under the IDEA.
- The SDE has established procedures for monitoring school districts/agencies in order to ensure the effective implementation of the procedural safeguards provisions for children with disabilities served by the school districts/agencies.
- Further training or technical assistance is provided to assist school districts/agencies in correcting any areas of noncompliance.
- Follow-up monitoring is conducted as needed.
- Federal funds under the IDEA are withheld to any school district/agency not in compliance with federal and state regulations regarding procedural safeguards as determined by the school district/agency's application under the IDEA, by monitoring, or through complaints received from constituents.

Hearings Related to LEA Eligibility

Section 300.144 Hearings Related to LEA (Local Educational Agency) Eligibility

Procedures to ensure that the SDE does not take any final action with respect to any application submitted by a school district/agency before giving the district/agency reasonable notice and opportunity for a hearing are as follows:

Process for Approval

The director of the Office of Exceptional Children shall approve/disapprove, in writing, the application(s) of a school district/agency within forty-five working days from the date of its receipt by the SDE, provided that the appropriate federal approval of the state's policies and procedures has been received by the SDE. Applications submitted prior to the Secretary of Education's approval of the policies and procedures shall be acted upon within twenty working days by the SDE following the receipt of documentation that the Secretary has approved the policies and procedures. All public agencies eligible to receive entitlements will be notified by the SDE of the final due date for all agency entitlements. The SDE ensures that responses to original applications will be made in sufficient time to allow agencies ample time to make appropriate revisions to the application and resubmit for approval.

Review will culminate in one of these decisions: "approved as submitted," "substantially approved," or "disapproved." The term "substantially approved" means that the plan is basically accurate but that a few minor revisions are necessary.

The term "disapproval" regarding an application shall be used for the purpose of denoting ineligibility or noncompliance with the IDEA.

Section 76.401 Disapproval of an Application—Opportunity for a Hearing

For all disapproved applications, including the original and subsequent amended applications, the SDE shall specify the reasons why the application cannot be approved.

When an application is disapproved, the applicant may submit an amended application addressing the elements cited in the SDE's response to the initial application. Revised applications must be received by the SDE within specified timelines.

Should the revised application be in violation of the timelines set forth, the applicant will forfeit entitlements. Prior to forfeiture, however, the applicant may request a hearing, provided a written request for such a hearing is made to the SDE within thirty days following the notification of disapproval by the SDE. The applicant's failure to participate in the IDEA does not exempt the school district/agency from compliance requirements

of the IDEA, Section 504, or all applicable state laws for the education of children with disabilities.

Hearing Procedures

- Within the time specified, the applicant must request a hearing by the SDE.
- Within thirty days after it receives a request, the SDE shall hold a hearing on the records and shall review its actions.
- Within ten days from the date of the request for a hearing, the SDE shall apprise the applicant in writing of the site, date, and time of the hearing.
- The hearing shall transpire within twenty days from the date of notification.
- The hearing board shall be constituted of
 - ▶ two persons of the SDE who were not involved in the review of the disapproval of the application and
 - ▶ two members of the SDE's Interagency Coordinating Council for Part C appointed by the chairperson of the Council.
- Witnesses/attorneys may be present and testify for the SDE or the applicant.
- Minutes shall be kept on all proceedings.
- The hearing board shall elect its chairperson, who, having reviewed all pertinent evidence presented, shall make a formal recommendation to the State Superintendent of Education within five days following the hearing. The State Superintendent of Education will make a decision binding on all parties.
- The State Superintendent of Education shall issue a written ruling within five days from receipt of the formal recommendation from the hearing board, including findings of fact and reasons for the ruling.
- If the SDE determines that its action was contrary to state or federal statutes or regulations that govern the application under the IDEA, the SDE will rescind its action.
- If the SDE does not rescind its action after the review, the applicant may appeal to the Secretary of Education, U.S. Department of Education. The school district/agency shall file a notice of the appeal with the Secretary within twenty days after the district/agency has been notified by the SDE of the results of the district/agency's review.

- The SDE will make all records of the applicant pertaining to any review or appeal the applicant is conducting under Section 76.401, including records of other applicants, available at reasonable times and places to each applicant.

Recovery of Funds for Misclassified Children

Section 300.145

Recovery of Funds for Misclassified Children

The SDE shall seek to recover funds or portions thereof, as appropriate, of entitlements under Part B of the IDEA for students who have been erroneously classified as disabled and included in the count mechanism under Section 611(a) or (d) of the IDEA. The term “erroneous classification” shall mean that the student has not been evaluated and placed in programs for exceptional children in accordance with State Board of Education regulations, including procedural safeguards.

The SDE shall seek to recover funds, or portions thereof, as appropriate, of entitlements under Part B of the IDEA for any of the following reasons:

- Students are not enrolled in a school or program operated or supported by a public agency.
- Students are not provided special education that meets state standards.
- Students are not provided with a related service that they need to assist them in benefiting from special education.
- Students are receiving special education funded solely by the federal government.
- Students are erroneously classified as disabled and included in the count mechanism of the IDEA.
- Students have been counted more than once (i.e., duplicated count).
- The SDE has determined that a school district/agency is unable or unwilling to establish and maintain a program of free and appropriate education that meets the requirements of the IDEA.
- The SDE has determined that a school district/agency is unable or unwilling to be consolidated with other agencies in accordance with the IDEA.

Should the SDE find it necessary to use payments for students in the instances described above, the school district/agency is not absolved of responsibility for providing free and appropriate programs of special education and related services for such students under South Carolina statutes.

Determination of Recovery of Funds

A. Determination of students erroneously classified as disabled shall be made by the following means:

- a voluntary admission by the school district/agency, which shall be signed by the chief administrative officer of the district/agency;

- compliance monitoring conducted by the SDE, which shall include teacher, parent, student, and principal interviews as well as classroom observations and student folder reviews;
 - monitoring of the December 1 Child Count;
 - unresolvable complaints received from individuals, agencies, or other parties that are substantiated by SDE investigation, with final determination being made by the State Superintendent of Education; and
 - financial audits.
- B. The school district/agency is unable or unwilling to consolidate with another district/agency or cannot adequately serve some few students. Determination shall be made by the SDE. Such reviews shall include definitive written reports by the chief administrative officer of the school district/agency detailing the circumstances and presenting statements of efforts made to serve the students of discussion as well as statements as to what the school district shall accord such students toward a FAPE. The director of the SDE's Office of Exceptional Children shall make the final determination of the district's/agency's ability or inability to serve the students described in this section.

Procedures for Recovery of Funds

Upon determination of the need for recovery of funds under the IDEA, one of the following procedures shall apply:

- Further payment shall be discontinued to the school district/agency in the amount consistent with the product of the number of students erroneously classified, multiplied by the amount of the entitlement per student for that school year.
- The State Superintendent of Education and directors of the Office of Exceptional Children and the Office of Finance shall require reimbursement to the SDE in the amount consistent with the product of the number of students erroneously classified, multiplied by the amount of the entitlement per student for that school year.
- If the funds recovered are current and available for utilization by the SDE, the funds will be redistributed to school districts/agencies under a reallocation or utilized for approved activities.
- If the funds recovered are no longer available for utilization by the SDE, the SDE will submit a check to OSEP in the amount recovered from the school district/agency.
- The SDE will ensure that no final action will be taken regarding the recovery of funds before allowing a school district/agency reasonable notice and an opportunity for a hearing. These procedures are delineated under Section 300.144, titled "Hearings Related to LEA (Local Educational Agency) Eligibility."

Suspension and Expulsion Rates

Section 300.146

Suspension and Expulsion Rates

The SDE collects data from all public agencies in the state relative to suspension and expulsion on an annual basis. The information collected is in conformance with the data required in table 5, "Report of Children with Disabilities Subject to Unilateral Removal Based on a Hearing Officer Determination Regarding Likely Injury or Long-Term Suspension/Expulsion" contained in the annual data report that is submitted each year to the Office of Special Education Programs.

The information is analyzed on a yearly basis to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among school districts/agencies in the state. If significant discrepancies exist, the SDE will review its policies and procedures to determine if revisions are needed. It will also utilize this analysis to determine if there is a need for additional training relative to the implementation of policies and procedures focusing on the suspension and expulsion of children with disabilities. Further, the results will have an impact on the types of training that will be provided.

Additional Information If SEA Provides Direct Services

Section 300.147

Additional Information If SEA Provides Direct Services

The SDE does not provide direct services as defined in Section 300.147.

Public Participation

Section 300.148

Public Participation (General)

The SDE ensures that prior to the adoption of these policies and procedures needed to comply with Part B of the IDEA, there were public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents with disabilities consistent with Sections 300.280–300.284.

Section 300.281

Notice

The following legal ad was published in major newspapers in the state on Sunday, March 26, 2000:

**LEGAL NOTICE TO NOTIFY INTERESTED PERSONS
OF PUBLIC HEARINGS
PROPOSED POLICIES AND PROCEDURES
UNDER PART B
OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)**

The South Carolina Department of Education has completed its proposed policies and procedures required under the Individuals with Disabilities Education Act (IDEA) that detail procedures to be utilized to ensure that all students with disabilities have available to them a free and appropriate public education and related services designed to meet their unique needs. Persons interested in reviewing the policies and procedures and making comments may attend one of the public hearings at the following times and locations:

<u>CITY</u>	<u>DATE/TIME</u>	<u>LOCATION</u>
Columbia	April 4, 2000 7:00 P.M.– 9:00 P.M. Phone: 803-691-4626	Margarette Miller Center 1509 Fontaine Road Columbia, SC 29223

Spartanburg	April 4, 2000 7:00 P.M.— 9:00 P.M. Phone 864-574-2111	Wilson World Hotel 9027 Fairforest Road Spartanburg, SC 29301
Florence	April 4, 2000 7:00 P.M.— 9:00 P.M. Phone: 843-664-8440	Wilson High School 1411 Old Marion Highway Florence, SC 29506
Charleston	April 6, 2000 7:00 P.M. — 9:00 P.M. Phone: 843-572-2200	Charleston International Best Western 7401 Northwoods Blvd. North Charleston, SC 29406

The purpose of these hearings is to receive comments and suggestions with specific regard to the proposed policies and procedures. Consideration of the comments and suggestions will be made by the Department prior to submission of the policies and procedures to the Office of Special Education Programs (OSEP).

Persons with disabilities who need accommodations in order to participate in the public hearing should contact the Office of Exceptional Children at 803-734-8224 no later than March 30, 2000.

A copy of the policies and procedures may be obtained by contacting the Office of Exceptional Children at 803-734-8224.

Individuals wishing to make comments should submit their comments, with reference to citations set forth in the policies and procedures, to the Office of Exceptional Children, State Department of Education, 1429 Senate Street, Columbia, South Carolina 29201, no later than April 7, 2000.

The following timetable will be utilized in developing the final policies and procedures and submitting them to the Office of Special Education Programs (OSEP).

Comments from South Carolina Advisory Council on the Education of Individuals with Disabilities	February 4, 2000
Public Hearings	April 4 and 6, 2000
Comments from public review due	April 7, 2000
Consideration of comments	April 11, 2000
Presentation of policies and procedures to State Superintendent of Education for signature	April 11, 2000
Submit to Office of Special Education Programs	April 14, 2000

Section 300.282 Opportunity to Participate and Comment Period

On March 1, 2000, draft copies of the policies and procedures under Part B of the IDEA were disseminated to the following:

- the superintendents/chief administrative officers of agencies,
- the coordinators of programs for children with disabilities in school districts/agencies,
- Head Start administrators and coordinators,
- institutions of higher education,
- advocacy groups,
- the Advisory Council on the Education of Individuals with Disabilities, and
- private schools.

Additionally, copies were available to individuals on a first-come, first-served basis until the supply was exhausted.

Public hearings were held in four sections of the state in an effort to afford all persons an opportunity to attend.

Section 300.283 Review of Public Comments before Adopting Policies and Procedures

The SDE received thirty comments from the public regarding the submission of the required policies and procedures. These comments were reviewed and considered, and modifications, where warranted, were made as a result.

Section 300.284**Publication and Availability of Approved
Policies and Procedures**

The SDE ensures that after the Secretary of Education approves the state's policies and procedures, the SDE shall give notice in newspapers or other media, or both, that the policies and procedures have been approved. The notice shall name places throughout the state where the policies and procedures are available for access by any interested person.

State Advisory Panel

Section 300.150 State Advisory Panel

The South Carolina Advisory Council on the Education of Individuals with Disabilities is organized and functions in accordance with Sections 300.650–300.653 of the IDEA.

Section 300.650 Establishment of Advisory Panels

The Advisory Council provides policy guidance with respect to special education and related services for students with disabilities in the state. The State Superintendent of Education appoints members to the Advisory Council for a three-year term.

Section 300.651 Membership

Membership is based on the requirements set forth in the IDEA, in S.C. Code Ann. § 59-36-10, and in the Advisory Council Bylaws. The Advisory Council membership is comprised of parents of children with disabilities; individuals with disabilities; teachers of students with disabilities; faculty in the departments of special education and general education in institutions of higher education; state and local education officials; administrators of programs for children with disabilities; representatives of private schools and public charter schools; a representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; representatives from the state juvenile and adult corrections agencies; and representatives from advocacy groups, organizations, and state agencies that provide support services to students with disabilities. The majority of the members of the panel are individuals with disabilities and parents of children with disabilities.

Section 300.652 Advisory Panel Functions

The Advisory Council has the following goals:

- to provide assistance in the development of strategies for meeting the educational needs, including the unmet needs, of students with disabilities ages three through twenty-one;
- to review and make recommendations on the state's policies and procedures to be submitted to the U.S. Department of Education for a FAPE in the LRE for students with disabilities;
- to review and make recommendations on regulations and statutes proposed to the State Board of Education and the South Carolina General Assembly;
- to provide assistance in the development of evaluations and reporting on data to the Secretary of Education;

- to provide assistance in the development of corrective action plans to address findings identified in federal monitoring reports;
- to provide assistance in the development and implementation of policies relating to the coordination of services for students with disabilities;
- to submit an annual report on the education of students with disabilities ages three through five to the South Carolina General Assembly;
- to submit an annual report to the general public, consistent with other public reporting requirements of Part B of the IDEA, on the activities, accomplishments, and recommendations of the Advisory Council; and
- to advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.

Section 300.653 Advisory Panel Procedures

The Advisory Council meets as often as is necessary to conduct its business, though usually no fewer than three times annually. Official minutes are kept on all Advisory Council meetings and are made available to the public on request. The Office of Public Information in the SDE announces all meetings, including the agenda and location, to the public. Meetings are always open to the public. Assistance for individuals with disabilities, including interpreters and other necessary services, is provided at Advisory Council meetings for members or participants. The Advisory Council serves without compensation, but the SDE reimburses the Advisory Council members for reasonable and necessary expenses that they incur in attending meetings and performing their duties. The SDE uses funds under Section 300.620 for these purposes.

Maintenance of State Financial Support

Section 300.154

Maintenance of State Financial Support

The SDE will not reduce the amount of state financial support for special education and related services for children with disabilities. Under the Education Finance Act, funds in the amount of \$200,073,778.62 were allocated to school districts for programs for children with disabilities for the 1997–98 school year. This figure increased to \$205,418,854.18 for the 1998–99 school year.

Policies and Procedures for Use of Part B Funds

Section 300.155

Policies and Procedures for Use of Part B Funds

The following policies and procedures have been established by the SDE to ensure that funds are utilized in accordance with the provisions of Part B of the IDEA.

I. Procedure for Allocations

- A. Of the total allocation under Part B of the IDEA, the SDE shall retain a sum that is not to exceed 20 percent.
- B. An amount equal to 5 percent of the aggregate allocated to the SDE shall be utilized by the SDE in the administration of the IDEA. This amount, however, shall be subtracted from the 20 percent retained by the SDE. No more than 15 percent of the aggregate shall be utilized by the SDE for direct and support services.
- C. The SDE shall utilize a portion of the funds reserved for direct and support services, the SDE shall utilize funds for the administrative costs of monitoring and complaint investigation to the extent that these costs exceed expenditures for the same purposes during the fiscal year 1985, as determined by the U.S. Department of Education. Funds in the amount of \$131,194.58 were expended during FY 1985.
- D. A minimum of 80 percent of the aggregate allocated to the SDE shall be made available as entitlements to school districts during the fiscal year of the allocation provided that the requirements of Section 614 and Section 615 of the IDEA are met.
- E. A minimum of 80 percent of the aggregate allocation shall, during any fiscal year in which the SDE receives an allocation under Part B of the IDEA, be made available to districts/agencies in accordance with the following:
 - The amount available, minimally 80 percent of the aggregate allocation, shall be divided by the total number of children with disabilities receiving special education and related services as reported on December 1 of the fiscal year immediately preceding the fiscal year for which the entitlement is made.
 - The quotient shall yield the amount generated per student.
 - The amount of the entitlement to any school district/agency shall be the product of the amount generated per student multiplied by the number of children with disabilities reported on the December 1 count of the preceding fiscal year.

II. Schedule for Entitlements to Agency

- A. The SDE shall approve appropriate applications for funds under the IDEA only after receipt by the SDE of the appropriate federal approval of the state's policies and procedures.
- B. The SDE shall approve the application of a district/agency provided the SDE determines that such application meets the requirements of the IDEA and provides satisfactory assurance that procedural safeguards are established.
- C. The SDE shall make entitlement awards to districts/agencies having approved applications each year following receipt of notification of appropriate federal approval of the policies and procedures and receipt of the grant document pursuant to said approval.
- D. If the application submitted to the SDE is not approvable, the SDE shall permit the applicant to make necessary changes within a specified timeframe. Should the revised application still be unapprovable, applicants will be permitted to submit another revised application. Should this second revised application be unapprovable, a hearing on the school district application may be held. In no case shall the SDE reserve the entitlement longer than one hundred eighty calendar days from the date of appropriate federal approval of the policies and procedures. Any monies thus forfeited shall be added to recovered funds.

III. Procedures for Utilization of Funds

- A. Funds retained by the SDE shall be utilized by the SDE in the administration of the IDEA. Five percent multiplied by the aggregate allocation to the state shall be subtracted from 20 percent of the aggregate. Expenditures will be for the following:
 - salaries for professional and clerical staff to meet requirements of the IDEA,
 - office operations,
 - student identification activities, and
 - in-service activities.
- B. Funds retained by the SDE, exclusive of the administrative set-aside, shall be utilized by the SDE to provide payment for direct and support services to children with disabilities consistent with the provisions and priorities set forth in the IDEA. The amount of these funds shall be determined by the following process:

The balance of funds (not to exceed 15 percent of the aggregate) received under the IDEA, not including flow-through and administrative set-aside, shall be the amount retained and utilized by the state for payment in the provision of direct services to children with disabilities. Funds retained and utilized by the SDE for payment in the provision of direct services shall be matched on a program basis

by the SDE from funds other than federal funds. Retained funds will be expended for these direct and support services:

- contracts for direct service delivery,
- direct services for priority students,
- contracts for large print books and other unique materials for children with visually disabilities, and
- complaints and monitoring.

C. Priority expenditures for monies retained by the SDE for the provision of direct and support services shall be as follows:

1. Direct Services

Direct services to children with disabilities ages three through twenty-one years who must receive special education and related services in other than public schools shall receive first priority under this category of funds. Consistent with State Board of Education Regulation 43-243, the only acceptable justification for such placements is the determination “that neither the public schools nor another governmental agency of the State can adequately provide special education and related services” to the student. Prior approval for such placements must be obtained by the district/agency. The following is the formula for payment for special education and related services:

- (a) The school district/agency must expend one similar student's share of funds received under the EFA. Should the cost of special education and related services exceed this sum, the balance shall be paid with funds obtained under the IDEA as stated below.
- (b) The school district shall pay 50 percent of the balance (obtained after subtracting the EFA funds and any other source exclusive of parent or student from the total cost of special education and related services) from its entitlement under Part B of the IDEA.
- (c) The SDE shall pay 50 percent of the balance from retained funds provided application for enrollment in other than public schools has been approved by the SDE. The institution delivering special education and related services must do so in accordance with the requirements of the IDEA.

2. Support Services

Priority two of the SDE shall be payment for the provision of support services with emphasis on support services for children with severe disabilities.

D. Funds allocated to agencies shall be utilized by the district/agency as follows:

- to provide a FAPE for all children with disabilities,
- to cover excess costs directly attributable to programs for educating children with disabilities, and
- to meet other requirements of the IDEA.

IV. Procedures for Reallocation

Reallocations shall be only for the purposes of reissuing funds under the IDEA to school districts/agencies in the event that the SDE should recover monies as set forth in these policies and procedures:

- A. The district/agency shall notify the SDE by March 30 of the carryover-funding year of the amount of the entitlement that shall not be expended by the agency by the end of the entitlement period. The only acceptable reason for not expending all of the entitlement shall be the attainment of full-service goals or extenuating circumstances.
- B. The sum of these recovered monies shall be added to any other recovered monies under the entitlement program and/or direct service programs provided recovery is made by July 1 of the carryover year.
- C. Utility of recovered funds derived from unexpended entitlement amounts and/or any funds recouped for improprieties shall be reallocated to all eligible agencies on a pro rata share. The latter shall transpire only when these occurrences transpire within the limitation of the funding period. Should recovery follow the expiration date of the entitlement, all recovered funds shall revert to the federal government.

V. Criteria for Determining Eligibility of Single Districts for Consolidated Funding under the IDEA

- A. Single school districts that are unable to generate an entitlement of \$7,500 and are of insufficient size and scope, as determined by the SDE, are ineligible to receive funding under the IDEA. Such local educational agencies, however, may become eligible for funding by submitting consolidated applications to the SDE, Office of Exceptional Children.
- B. All school districts are mandated by both federal and state statutes to serve all resident children with disabilities within their districts, whether or not they choose to make application for funding under the IDEA.
- C. Each local district entitlement shall be determined by multiplying the number of children with disabilities (as reported on December 1 of the previous year) by the

per student share as determined from the federal allocation to the state of South Carolina. This allocation shall be contingent upon the annual appropriation by Congress.

- D. In those districts where cooperative programs are formulated in order to receive funding under the IDEA, one district will be designated as the fiscal agent. A grant award equaling the sum total of the entitlement amounts available to each agency involved in a consolidated application will be issued to the fiscal agent. Further, a consolidated application must be approved by the SDE and such application representing several districts must detail/delineate the responsibilities among the districts for serving all children with disabilities residing in the districts constituting the consortium. Approved applications shall guarantee the policy of a free and appropriate education to all children with disabilities resident within the districts named therein.
- E. The decisions as to which school districts shall consolidate for the purpose of receiving entitlements under the IDEA shall be within the purview of the boards of trustees of local school districts involved contingent upon the final approval of the SDE. Consortia districts must be in the immediate geographic area.

VI. Process to Ensure Comparability

- A. The primary responsibility of ensuring a system of public education that provides appropriate educational opportunities to every student lies with the State Board of Education. In order to fulfill this responsibility, the school district/agency must operate educational programs that provide at least a minimum educational program as set forth in the defined program/accreditation procedures to ensure a minimum level of adequate human and financial resources.
- B. Minimal standards for all students receiving public education, including the children with disabilities, are outlined in the defined program/accreditation procedures. Specific portions of the defined program/accreditation procedures relate directly and uniquely to the establishment and maintenance of programs for students with disabilities in school districts/agencies. The defined program/accreditation procedures ensure comparability among all programs regardless of funding sources.
- C. The Office of Exceptional Children serves as a resource to the Office of School Quality, which has the prime responsibility within the SDE for conducting audits.
- D. Although comparability is ensured among school district programs through the implementation and monitoring of the defined program/accreditation procedures, an additional mechanism ensuring comparability will be the monitoring of the IEPs by the Office of Exceptional Children. Additional information on the monitoring of the IEPs is included in the IEP section of these policies and procedures.

VII. Uniform Reporting Procedures

- A. SDE's Office of Finance instituted a uniform accounting system in 1977 in accordance with the principles detailed in the handbook *Financial Accounting for Local and State School Systems*, published by the U.S. Department of Health, Education and Welfare's Office of Education (1957). This system—which all school districts in the state had implemented by July 1, 1977—has enabled the SDE, through the school districts, to make such reports in such form and containing such information as the Secretary of Education may require of the state in its carrying out of the functions under this section and in keeping such records and affording such access to the Secretary as may be necessary to ensure the correctness and verification of such reports and proper disbursements of federal funds under this section.
- B. The SDE shall ensure that the financial reporting forms developed by the U.S. Department of Education will be utilized.
- C. The SDE shall ensure that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, federal funds paid under this part to the state.

VIII. Procedures to Determine Financial Accountability

A. Certified Audit Reports

Regulations of the SDE require that an annual audit of all financial records shall be made by a certified or licensed public accountant selected by the district and that a copy of the audit in the format prescribed by the SDE shall be filed with the SDE by December 1 following the close of the fiscal year. In addition, federal regulations require the SDE to establish and maintain a financial management system to fulfill these requirements. Expenditures under the IDEA shall be audited locally as a regular part of the school districts'/agencies' audit procedures prescribed by state law and regulations. Consistent with 34 C.F.R. § 74.61(h)(1–6), school districts'/agencies' audits must include separate financial schedules on statements identifying receipts and expenditures applicable to each specific entitlement under the IDEA with appropriate certification as to the veracity of the report. These reports are to be received by the SDE, Office of District Auditing and Field Services, by December 1 each year for the appropriate entitlement period. The Office of District Auditing and Field Services will report any audit exceptions to the Office of Exceptional Children for investigation.

B. Nonsupplanting of IDEA Funds

The IDEA requires that each school district use funds provided under the IDEA to supplement and, to the extent practicable, to increase the level of state and local funds expended for the education of children with disabilities and in no case to supplant those state and local funds. The funding procedure of state and local monies has been set forth under the EFA. Under this system, “compliance of

nonsupplanting” has been interpreted to mean that each school district has expended and has met the audit standards for each program disability area funded with EFA funds. As the state funds available for programs for students with disabilities are administered and audited by the Office of Finance, determination of compliance with the nonsupplanting requirement will be made by the Office of Finance.

The following procedure has been developed jointly by the Office of Exceptional Children and the Office of Finance as a mechanism for the SDE to determine compliance with the IDEA regarding supplanting:

1. As a condition of receiving the IDEA funds, each school district superintendent will sign and submit a statement of assurance that the school district will not supplant state and local funds with the IDEA funds. This certification will be submitted as part of the IDEA entitlement application.
2. At least every three years, the Office of District Auditing and Field Services will audit each school district for appropriate use of EFA funds including appropriate utilization of funds generated for programs for students with disabilities.
3. The Office of District Auditing and Field Services will provide to the Office of Exceptional Children the audit exceptions when they occur by districts/agencies. The Office of District Auditing and Field Services will provide specific findings/information as an identifier for the Office of Exceptional Children to recover funds under the IDEA.
4. The final decision for fund recovery and the process shall be within the purview of the State Superintendent of Education.

C. Excess Cost Computations

1. A school district/agency must determine an aggregate minimum amount for both elementary and secondary levels. Also, school districts/agencies must maintain records to document its compliance with excess cost. To fulfill this federal regulation, districts/agencies are required to submit the following computations prior to approval of their entitlements:
 - elementary (K–8), per student expenditure;
 - secondary (9–12), per student expenditure;
 - elementary, aggregate minimum amount; and
 - secondary, aggregate minimum amount.
2. School districts/agencies may utilize the formula as specified in the regulations or complete the Excess Cost Worksheet developed by the SDE. The latter is a formula that meets the federal requirements and is compatible

to the uniform accounting system utilized by all school districts in South Carolina.

D. Internal Monitoring

Prior to awarding grant documents for funding of entitlements under the IDEA, the following three areas are investigated to determine compliance with the requirements of the IDEA:

- Required data reports have been received and approved.
- The school district/agency is in compliance with the requirements of the IDEA as determined by SDE program monitoring.
- There are no unresolved complaints regarding evaluation, placement, and IEPs of children with disabilities residing in the school district/agency as determined by the SDE complaint procedures.

If an agency is in compliance in all three areas, grant awards are issued. If it is determined that the agency is in noncompliance in any or all areas, grant award approval for funding under the IDEA is delayed until the school district/agency has sufficiently resolved any areas of deficiency.

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